# WHITE BOOK

Proposals for improvement of the business environment in Serbia

2009


Foreign Investors Council

FOREIGN INVESTORS COUNCIL

# WHITE BOOK

Proposals for improvement
of the business environment in Serbia

**Editors:**
Prof PhD Mihailo Crnobrnja, British American Tobacco East Balkans d.o.o.
and Foreign Investors Council
Ms Vidosava Džagić, Serbian Chamber of Commerce

2009

# CONTENTS


Foreword ..... 7
FIC overview ..... 9
Corporate social responsibility manifesto ..... 10
Investment and business climate ..... 12

**PILLARS OF DEVELOPMENT**

Introduction ..... 15
Infrastructure ..... 16
Real estate and construction ..... 22
Labour ..... 27

**LEGAL FRAMEWORK**

Introduction ..... 35
Serbian business registers agency ..... 36
Company law ..... 38
Securities market trends ..... 41
Competition law ..... 44
Consumer protection ..... 48
General safety of goods ..... 51
E-commerce regulations and digital signature ..... 52
Foreign trade ..... 53
Customs ..... 55
Foreign exchange operations ..... 63
Law on prevention of money laundering ..... 65
Law on protection of personal data ..... 68
Intellectual property ..... 70
Tax ..... 72
Environmental regulations ..... 77
Private-public partnership ..... 80

**SECTOR SPECIFIC**

Tobacco industry ..... 84
Insurance ..... 86
Private security industry ..... 89
Leasing ..... 91
Chemical industry (ADCPI) ..... 93

FIC Members ..... 96
Acknowledgements ..... 101
Impressum ..... 102

# FOREWORD

The time period covered by this White Book edition has proven to be very challenging for all, both the private and the public sector. The year behind us has been shaped and coloured by the crisis which struck all countries and economies around the globe.

In Serbia, which is not yet fully integrated into international market, the crisis came with a delay and added up to imperfections of the economy in the middle of transition. Foreign investors demonstrated significant adaptability and promptly responded by altering business plans and operations to fit the changed environment. The Serbian government allocated the limited resources that were available to develop a comprehensive framework of measures and address the problems on both macro and micro level. The Government anti-crisis plan attained most of the set goals and provided much needed support to the fragile Serbian market. However, the impact of those measures could have been deeper, had the government responded in a swift manner. We note that synchronized response of both public and private sector in the early stages of the crisis could have yielded superior results.

The crisis has had multiple effects on the Serbian economy. Firstly, it introduced illiquidity, as the key marking of global economy today. The initial Government reaction envisaged raising the guaranteed amount of savings deposits at the local banks to €50,000. In a joint effort, Serbian authorities and the banking sector formulated a liquidity safety-net, with facilitation of the international financial institutions. So-called Vienna arrangement has been reached between the Serbian Central Bank and the ten European banks, which committed to keeping the same level of exposure at the Serbian market, thus restoring the confidence and giving a positive injection to the Serbian business community. Lessons learnt in the past period suggest that the authorities should broaden their strategy and work on designing innovative solutions to tackle particular liquidity issues.

Secondly, the crisis put on the spotlight the unresolved problems, which have been burdening Serbia for decades. Due to severe drop in inflow of foreign direct investments, the budgetary deficit spread dramatically, revealing the extensive public spending and slow pace of public reforms. To that end, healthy part of the stricken economy and loan agreements remained the key sources of public revenue. In the time ahead, the Government should formulate and carefully implement sustainable policies which would recognize the capacities of the vibrant part of the economy, and re-affirm the level playing field.

In addition, slow process of privatization came to a standstill, as Serbian authorities decided to postpone the execution of the announced privatization plan of the state-own enterprises. Understanding that the crisis represented the key rationale for that decision, we express hope that the privatization plan would be re-launched as soon as the prospects of economic recovery emerge. At the same time, authorities continued with the execution of the bilateral energy agreement with the Russian Federation, so that to improve the energy stability of the Serbian market. In the future period, further developments are expected in terms of introduction of market mechanisms and liberalization of the energy market. To that end, the current arrangements would be put in service of attaining one of the key goals that the Government proclaimed – introduction of competition in the infrastructure and communal sectors.

In view of scarce resources and the need to maintain macroeconomic stability, Serbian authorities secured the support of the Bretton Wood Institutions. Signing of the agreement with the International Monetary Fund sent an instrumental signal to the investors and inflicted stability. However, we all bear witness to the fact that certain targets of the IMF arrangement have not yet been met, especially those related to the cut of public expenditure. Underlining the continuous recommendation of the White Book editions to tackle the issue of extensive public spending, the FIC welcomes the Government agenda to more efficiently utilize the available resources and perform the public administration reform.

Analysing the last year, we would also like to point out to significant developments in the foreign trade regime. Most importantly, Serbia entered year 2009 with unilateral implementation of the Interim Trade Agreement with EU, opening up the market to competition, but also sending a clear signal that the country is determined to continue on the path of European integration. In addition, Serbia signed free trade agreements with Belarus and Turkey, as well as expanded the list of customs-free products within the FTA with Rus-

sian Federation. Over and above, CEFTA continued to bring positive outcomes to Serbia and the regional economy as a whole, accentuating benefits of a wider market.

In terms of political developments, we note that the last year brought increased stability, compared to the past period. Two important processes have remained open, namely resolution of the Kosovo status and closing the cooperation with ICTY, and Serbia invested major efforts in presenting its positions and addressing unresolved issues. While these processes do not directly affect business conditions, overall political stability does have an influence on evaluation of market solidity.

Looking into the regulatory progress, we need to recognize two parallel processes. On one side, the Government launched the project of streamlining the present legislative framework – Comprehensive Regulatory Reform aka Guillotine project. The FIC actively engaged in this process and provided more than a hundred proposals for simplifying complicated procedures and removing obsolete regulations in the areas of tax procedures, customs procedures, labour regulations and telecommunications. We express hope that the Government will diligently analyse the given proposals and take respective decisions. As a result, we expect that the regulatory framework in 2010 would be simpler, clearer and more economical.

In parallel, Serbian authorities have propelled a comprehensive legislative endeavour, formulating and endorsing numerous laws from those that represent the regulatory milestones, to those that tackle the specific regulatory fields. Nonetheless, we note that there is still room for improvement, as Serbia undergoes the process of harmonization with international standards and practices.

Bearing the above-mentioned in mind, we point out to the difficulties in implementation of the enacted legislation. We emphasize the issues pertaining to the capacity to formulate necessary by-laws, as well as the inconsistencies in enforcement of current regulations. Having said that, we hope that the further pace of reforms and the upcoming public administration reform would be designed so that to enable successful execution of the contemporary legislation.

We also suggest that the solutions for many of the open issues could be successfully defined by devising continuous information stream between the willing stakeholders. To that end, we would like to acknowledge the openness of the current authorities to engage in the dialogue with the private sector while formulating the upcoming policies, as well as tackling various implementation problems. At the same time, we call upon the Government to actively engage in a dialogue on the broader governmental strategies and cross-sectoral issues, which have great affect on the doing business conditions. Enhanced dialogue significantly increases predictability of the business climate, which we persistently seek and strongly advocate, because they fundamentally influence the future business strategies.

In closure, let us formulate the key messages for the future. Looking forward, the foreign investor' community holds the same expectations as in previous years: clear economic policy, continuation of the reform process, more efficient administration, and level playing field. Making progress in attaining any of these goals would represent the crucial and necessary step on the path to raising competitiveness and liberalization of the Serbian market. Additionally, further reforms would lead to comprehensive and solid gateway to tackling the issue of corruption.

The Foreign Investors Council engages in the effort to produce the White Book, as its contribution to upgrading the Serbian regulatory framework and the foundation for discussion with the authorities. The White Book formula remains the same. Firstly, we present the current situation in the respective field. Secondly, we note the developments between two editions. Thirdly, we identify the remaining issues that need to be tackled. And lastly, we provide concrete proposals on how to overcome the obstacles.

We hope that the proposals which are listed in this book, would assist the authorities in defining the future policies and shaping the doing business conditions in Serbia. The Foreign Investors Council stays committed to facilitate creation of a better investment environment through the open dialogue with all willing stakeholders.

Aleksandar Radosavljević
FIC President

# FIC OVERVIEW

Seven years ago, 14 major foreign investors in Serbia, with the support of the OECD, gathered around the common idea of contributing to the improvement of the investment environment in Serbia.

Throughout past years, the Foreign Investors Council has proven to be a powerful, constructive and, therefore, respected reference tool on matters related to the development of the overall business climate. Today, FIC counts around 120 members with representatives from more than 20 different countries. Involved in a wide range of industries, FIC members account for more than three-quarters of total foreign direct investment in Serbia and employ significant number of the local labour force. The organization is alive and continually growing.

Following its mission and striving to fulfil its aims, the Council has always worked in close partnership with the relevant government authorities, international organizations and institutions. Its main purpose is to share positive international business practices with local authorities and support their reform activities. Therefore, the FIC is constantly involved in both formal and informal dialogue between willing stakeholders. Activities in the past year included launching of a number of advocacy initiatives and organization of several presentations; partnerships in organization of various round tables, panel discussions and conferences; participation in and support for many non-FIC events; ongoing and continuous servicing of the membership; and, of course, dedicated work on the White Book.

In addition, the FIC invested significant efforts into the so-called Regulatory Guillotine project in an attempt to also use this mechanism to key out the main obstacles to doing business. For this purpose the FIC engaged its standing committees, as well as created special working groups – tax, customs, and telecommunications – and came out with 119 concrete proposals to amend the existing regulations. In the time ahead, the FIC awaits direct dialogue with the authorities so that to elaborate these proposals.

Most FIC activities are initiated by the members themselves and developed through the work of specialized committees that cover dominant interests and needs of the members: Legal, Human Resources, and Taxation. Two committees remained inactive in the past year: Corporate Social Responsibility, and Exploration and Mining. The past year was marked by forming of a new Telecommunications Committee, as well as the re-activation of the Real-Estate Committee and specialized committee on Detergents and Cosmetics. These are some of the topics that bring together FIC members on a regular basis. FIC provides a good platform for the exchange of experiences and opinions among its membership.

Working on building solid partnerships, the FIC continued cooperation with the Serbian Chamber of Commerce in preparation of the White Book. The Council is grateful to the Chamber for the valuable contributions to this year's publication. In the years to come, the White Book will remain to be a cooperative effort. After all, foreign investors are also members of the Serbian Chamber of Commerce and, hopefully in several years, the FIC will have no reason to exist as Serbia readies to join the EU.

In the future, the Council will continue in striving to build-up good partnership relations both with state authorities and other relevant stakeholders. FIC has already engaged in close cooperation with like-minded business-oriented organizations such as the American Chamber of Commerce and others, with the aim to contribute to the overall improvement of investment and business climate, through joint activities. We also intend to pay much more attention to the follow-up, and revigorate working with governmental institutions in converting our recommendations into reality.

# CORPORATE SOCIAL RESPONSIBILITY MANIFESTO

As leading foreign companies operating in Serbia and members of the Foreign Investment Council, we are fully aware of our duty and obligation to support responsible business practice within Serbian society at large. By promoting and implementing the concept of corporate social responsibility (CSR), we are trying to build trust among citizens and demonstrate our ability and willingness to contribute to the society with our insight and expertise and, most of all, with our commitment to the local community.

We are very pleased to see that the idea of the corporate social responsibility in Serbia evolved in a very short time from a totally unknown concept to one of the most frequently mentioned topics, irrespective of the certain confusion surrounding the definition of the phrase. From our side we can contribute to the creation of a local definition of the term. CSR is not some additional programme or campaign aimed to charm or impress media or consumers. It is more about how we are doing our day-to-day business operations by taking responsibility for the impact of all our activities. This surpasses statutory obligations, existing legislation and activities aimed to build seductive corporate reputation. CSR is not about what we must, but rather what we want to do. It is about behaving ethically and contributing to economic development by improving the quality of life of the workforce and their families as well as of the local community and society at large, including the environment.

We are a part of the community, and as such we take responsibility for its development. Serbia is a country with great potential and it is our real pleasure and privilege to be here. The concept of corporate social responsibility also includes endeavours to preserve local traditional values, not only to impose global standards. From that point of view, we can say that we see corporate social responsibility as a perfect mixture of the sustainable growth, social philanthropy and responsibility for all social issues and problems that may or may not be considered as our liability as individual companies. The concept of corporate social responsibility goes beyond individual interests. The mutual interest all of us is to live in the responsible community that is capable to face any challenge.

In our opinion, one of the key qualitative changes in the understanding of socially responsible business in Serbia is reflected in the increasing shift away from the traditional corporate donations of the fine arts and established institutions, and towards addressing real social problems to have a meaningful impact on the society in which we are operating. Such issues include environmental concerns, as well as business diversity to incorporate the inclusion of socially marginalised groups.

Examples of best practice, such as Raising Awareness of Breast Cancer, For Clean Serbia, and Our Belgrade, which were implemented alongside strong media campaigns, were significant attempts towards managing acute societal problems. In these projects, the support of socially-aware companies, among which are numerous members of the Foreign Investors Council, was not reduced to mere donations of funds. These were excellent examples of how socially responsible companies can positively engage on critical issues.

Being part of the foreign investment community, we believe that it is crucially important to unify the available potential, achieve consensus on the appropriate role of business in society, and develop local methods to accelerate positive change. In this respect, we see the role of foreign investors who are ready to join forces with all who have will, power and desire to improve the quality of life for people in Serbia.

## WE BELIEVE IN

- Introducing ethical obligations that each company in Serbia prepare annual CSR reports analysing its activities and their impact on the community;
- Improving dialogue at all levels of society, including competent government authorities, the media, non-governmental organisations, social groups and movements for the purpose of further promotion of the concept of socially responsible business in accordance with the principles of sustainable development;
- Analysing current legal regulation and proposing new legal solutions in accordance with EU standards and initiating the adoption of concrete measures that will stimulate socially responsible behaviour;
- Improving corporate governance standards in terms of business transparency and information availability;
- Active involvement in solving acute societal problems, such as employment policy, environmental programmes and similar;
- Creating of an efficient network that would include all actors on the social scene which are able to promote CSR, including relevant government institutions and non-governmental organisations;
- Initiation of university education programmes relating to CSR, sustainable development and other relevant issues.

# INVESTMENT AND BUSINESS CLIMATE

The overriding feature impacting the business during the past year is the financial and economic crisis that shook the whole world. The crisis also hit Serbia. It was unavoidable, particularly considering the fragility of the Serbian business environment which is still in the process of transition.

Like in most countries the GDP fell rather dramatically. From a growth of over 5%, the GDP index will end up with a 3 to 5 percent fall in the course of 2009. Industrial production in the first half of 2009 is 18% smaller then in the first half of 2008. The foreign trade sector also registers a dramatic fall in activity, 37% in the first half of the year. Both exports and imports are falling, thus reducing the absolute size of the trade deficit. Exports fell by 34% and imports fell by 39%, with the effect of a slight improvement of the balance of trade. Exports now cover just over 50% of imports while last year, in the same period, the ratio was 47%.

The recession contributed to the reduction of inflationary pressures in the first half of 2009. Still, Serbia has one of the highest inflation rates in Europe. The biggest contributor to the high inflation rate is the segment of prices which are under Government control. These prices grew by 50% more than the prices formed on the market.

Unemployment, which was high to begin with, is increasing and will probably continue to increase, at least until the end of 2009, and possibly in the first half of 2010 as well. Total employment fell by over 100,000 year-on-year thus bringing the unemployment rate up by two percentage points, from 14.4% to 16.4%. The interesting feature is that companies did not react automatically, by firing workers in according to the fall in the volume of their output. As a consequence the unit costs of labour increased, thus contributing to reducing the already poor competitiveness of Serbia in the global market.

The volume of foreign investment is also falling compared to previous years, both in terms of acquisition of firms through privatization, as well as direct foreign investment.

Relations with the European Union are at a stand still since the Stabilization and Association Agreement was signed and then its implementation immediately frozen. Political relations seem to be improving, but this so far did not translate into steps which would unblock Serbia's integration into the EU. The state of affairs with EU integration has negative consequences on the flow of foreign investment as well as on the credit rating of Serbia, thus making credit more expensive.

Serbia decided to implement the SAA unilaterally since January 1st 2009. The effect of unilateral implementation is, first of all, in the abolition of tariffs for a number of goods and a phased reduction of tariffs for those goods that are still subject to custom duties. This makes imported goods cheaper on the domestic market which is good news for companies that depend on imported inputs. The other significant effect is that cheaper imports contribute to competition on the domestic market.

Other than the European Union, Serbia has mounted a "diplomatic offensive" on other key players in the world with a view of converting diplomatic success into business deals. China, Russia and, to a lesser extent, the Non-Aligned countries are the subjects of this "offensive". It is too early to assess the full benefits of this initiative but some results are visible already, such as China's involvement in building a bridge near Belgrade, Russia's involvement in the energy sector and financial support to Serbia (credit lines) by both countries.

The monetary and financial sector fared a little better then in those countries that captured the headlines on news in the banking crisis. The banking sector maintained adequate liquidity because of the previous restrictive policy of the National Bank on reserves. The withdrawal of close to a billion euros by deposit holders did not create a banking crisis. And with the Government's decision to increase the guarantee of deposits up to EUR 50,000 the banking sector regained the confidence of the population and savings started increasing once again.

However, the liquidity of the banks did not translate into liquidity of the economy. The number of illiquid companies increased by over 15% in a period of six months. So far, no formula has emerged which would increase the liquidity of companies. In fact, it could be said that the Government acted to decrease the liquidity by emitting short term bonds. These bonds were much more attractive and secure than credits to companies so the banking sector preferred to invest into Government bonds rather than the economy.

Starting in March of 2009 the Government attempted to boost credit activity of banks by subsidizing the interest rate. Banks

that were a part of the subsidization scheme received over a billion euros of requests and granted just over 600 million in credits. The bulk of the granted credits were for working capital, i.e. improving liquidity. Only three investment credits were granted, totaling only EUR 500,000.

The dinar exchange rate has remained reasonably stable, albeit at a somewhat higher level than last year. The agreement with the IMF, and the funds available from this institution, are an important factor in maintaining the exchange rate stability. Also, the sale of the national oil company Naftagas brought in around half a million euros which helped to offset the effect of lower inflow of remittances from workers abroad.

The government expenditure remains the biggest source of instability and inflationary pressures. The budget is not only showing a deficit but the deficit, until recently, had a tendency of increasing. Currently, the projection for the next year is a deficit of 4% which has also been accepted by the IMF. The collection of revenues is falling far behind the projected for two reasons. First, the fall in GDP brough about by the recession. Second, the shifting of companies from the legal to the gray market to evade taxes.

Business climate did not undergo major changes for the better. It could be argued that the business climate deteriorated. If we consider that there is a high correlation between competitiveness and the business climate, than the competitiveness index of the World Economic Forum shows that things in Serbia have deteriorated. In last years Report Serbia was ranked 85th among 134 countries analyzed. In this years Report Serbia slipped to the 93rd position.

In some key aspects which form the complex competitiveness index Serbia is even bellow the composite ranking. For example, in intellectual property protection Serbia has the rank of 101, in burden of Government regulation the rank of 129, efficiency of corporate boards ranks 120th, effects of antimonopoly policy 131st, procedure to start a business 99th, business impact of rules on FDI 106th, financial market sophistication 111th, firm-level technology absorption 125th, production process sophistication 109th, company spending on R&D ranks Serbia 110th, extent of staff training 120th and so on.

Among the positive developments which contribute to the quality of the business environment are: the enactment of a Law on State Aid which will take effect on January 1st 2010, the simplification of customs procedures and the consolidation of services at border crossings, the new Law on Cadastre, the shortening of procedure for obtaining construction permits, amendments to the Law on Investment Funds, amendments to the Law on Corporate Income Tax, a new Law on Foreigners. All of these and other positive developments are elaborated in greater detail in the text that follows.

## FIC RECOMMENDATIONS

We will repeat some of the key recommendations from last year due to the fact that little or no improvement has been registered in the past year:

- Accelerate the rate of transition reforms which will improve business conditions and also bring Serbia closer to the European Union;
- Creation of conditions for market competition in a regulated market, by providing equal rights for all competitors, and proper regulation of monopolies;
- Reform of education system in Serbia and its harmonization with requirements of the economy;
- Stimulation of applied science development through appropriate financial support and more intense relations with

R&D institutions, domestic and foreign.

To these we add new recommendations:

- To pass thorugh the Parliament and implement the „Regulatory Guillotine“ as soon as possible;
- Improve the organization and increase the efficiency of all preparatory and administrative work connected to the withdrawal of approved credits from international financial institutions;
- All Government enterprises and other recipients of budgetary funds should pay for goods and services no later then 60 days after the purchase to prevent them from being the largest generator of illiquidity;
- Consider making an Action plan for increasing the credit rating of Serbia.

# PILLARS OF DEVELOPMENT

There have been no dramatic changes in the sectors considered as pillars of development over the last year, either positive or negative. There have been some minor improvements in each of the three segments, as reported in the next three chapters, but the FIC assessment remains the same as last year: the improvements are smaller than they could have been and definitely smaller than necessary to attract more investment.

In **infrastructure**, an important reason for slow progress is definitely the economic crisis. Improvement of infrastructure requires a lot of money which in the crisis is becoming increasingly scarce. The noted improvements in the past year are: the continuation of the works on the highway component of Corridor 10, the passage of a comprehensive plan for road and railway transport improvement, worth 4 billion euros in the period until 2015, and the equalization of toll payments for domestic and foreign users of highways. Some important issues still remain unresolved, such as the public- private funding of infrastructure projects. The first such attempt, the Horgoš-Požega highway, was aborted and no new major PPP projects are in sight.

In **real estate and construction** a major breakthrough was initiated in the Summer of 2009 with the passage of several important pieces of legislation in the Parliament. However, as past experience has shown, we can talk about a real break through only if the necessary by-laws and other pieces of legislation are passed expediently, and if the laws are observed and implemented fully by the relevant authorities. Among the most important laws passed recently are: the Law on Planning and Construction, the Law on Cadastre and State Survey, the Law on Social Housing. The most important possible impact of the Laws is the possibility to purchase land, the fact that the properties registered in the Cadastre should have an evaluation of the market value, a significant shortening of the time necessary to acquire construction permits.

But this sector also has a rather long list of remaining issues which lead to no less then ten FIC recommendations. Some of the noted remaining issues are: after so many years of trying there is still no Restitution Law; in some segments the Government ordinance determines prices rather than the market; lack of clearly defined penalty policy; the lack of transparency in the permits acquisition process, real estate leasing is still in its infancy.

**Human Capital** as a pillar of development also witnessed some improvements and a host of unresolved, i.e. remaining issues. Among the positive developments we note the passage of several laws, such as the Law on Foreigners, the Law on Professional Rehabilitation and Employment of Persons with Disabilities, the Law on Employment and Insurance in Case of Unemployment, as well as an important amendment to the Labour Law (article 116) allowing employers to send employees on paid leave in case of decrease of the volume of work.

Other than regulatory work, over the past year there have been some positive initiatives such as: employment of 10,000 apprentices, the adoption of the National Youth Strategy, implementation of the Bologna Process in higher education, and the efforts to promote a safe and healthy work environment.

Among the remaining issues we note the need to further fine-tune the General Collective Agreement which does not address some important issues in a balanced way. Also, we would like to add that in our view the Labour Law is still problematic and we repeat the same suggestions that we gave last year on how to improve the Labour Law. Development of human capital and the labour market deserve more attention because they are important for two reasons: first, human capital, more than any other component, determines the growth and development of an economy in contemporary circumstances. Second, the quality of human capital and the conditions of the labour market are an important element of attracting foreign investment which, in turn, also contribute to the quality and quantity of growth and development.

# INFRASTRUCTURE

## TRANSPORT

### CURRENT SITUATION

There are major deficiencies as well as opportunities in the transport sector in Serbia. Unsustainable tariff and financial policies and inadequate use of existing funds have resulted in a significant de-capitalization of the sector and lower the quality of infrastructure and equipment. The capability of institutions has also much weakened, as systems and procedures for planning, monitoring, and managing transport activities have been neglected or even misused.

Over past few years, institutions have had to focus on coping with emergencies, leaving little room for developing and implementing long-term plans. This has resulted in inefficiencies and bottlenecks which are bound to slow down economic recovery if not addressed soon.

Current economic crisis in particular hit the construction sector, including the construction of major infrastructure. The Government is facing budget deficit higher than expected hence the budget funding of infrastructure works will not be (completely) feasible in 2009.

## POSITIVE DEVELOPMENTS

The Government of Serbia envisaged a comprehensive national plan for road and railway infrastructure reform. That plan includes 4 major projects planned for completion between 2008 and 2015. The value of these infrastructures works amounts to more than EUR 4 billion to be provided from the donors and international creditors as well from the budget.

In early 2009, the Government of Serbia finally equalized toll-roads for domestic and foreign vehicles which were discriminatory for foreign vehicles (80% higher than for domestic ones).

## REMAINING ISSUES

Even so the Government appropriated significant funds for repair of existing and building of new infrastructure, the lack of funding for comprehensive infrastructure reform is still the burning problem. Due to insufficient budgetary revenues in 2009, it is likely that most of envisaged projects will not be performed.

That raises another issue of insufficient participation of private sector (PPP projects) in development and realization of infrastructure projects. The concession given to Alpine-Poor consortium for construction of Horgoš-Pozega highway was terminated due to lack of funding and that was the first PPP project in Serbia. The absence of more investors of who would engage in these kinds of projects may be explained in deficient legal and regulatory framework, among other reasons. Another reason is very high charges for toll-roads which repelled freight transport from Serbian routes. Although toll-roads are now equal for domestic and foreign vehicles, they are still significantly higher than in neighboring countries and that resulted in decrease of incomes from transit tourism since bulk of the (primarily) freight transport moved to Romania and Bulgaria where toll-roads are lower. The investors who would participate in PPP projects have to count on steady revenues from the toll-road for repayment of their investment.

## FIC RECOMMENDATIONS

- Increase funding of maintenance and rehabilitation of major roads in order to stop the long term deterioration of the road network;
- Institutional reform and institution building;
- Reinstate the quality of the republican road administration;

- Private sector development and participation;
- Increase efforts to minimize public costs of the reforms by charging users wherever reasonable and through increased private sector participation wherever there is a sufficient scope for competition;
- Set up an efficient system of toll-road user charges in Serbia and decrease toll-roads in order to return transit tourists (passenger and cargo vehicles) to Serbian roads.

# ENERGY SECTOR

## CURRENT SITUATION

The new Law on Energy adopted in 2004 is almost fully harmonized with the respective EU regulations. In line with the European practice, the Energy Agency, an independent regulatory body has been established in 2005.

The Law introduces facilitated legal regime for so-called privileged energy producers. The term incorporates energy producers using renewable resources or waste for energy production and producers from small power plants. The Law provides for various tax, customs and other benefits for privileged energy producers. However, the general provisions from the Law are not followed with adequate by-laws which would enable implementation of this privileged legal regime.

## POSITIVE DEVELOPMENTS

In 2006, Serbia ratified the Energy Treaty which establishes unified legal framework for trading in energy and natural gas in South East Europe and EU. Ratification of this Treaty requires adequate amendments of the Energy Law which will introduce provisions on internal energy market and on access to electric transmission network for cross-border exchange of electric power. There is also a need for incorporation of rules for promotion of the energy produced by the privileged producers at the internal energy market; conditions for access to natural gas transportation networks; measures for securing continued supply of natural gas and measures for securing supply of electric energy and investments in infrastructure. In that regard, the Ministry for Energy and Mining prepared amendments of the Energy Law incorporating all above changes.

In 2009, Serbia signed the agreement on construction of the pipeline so-called "Juzni tok" with Russian company Gasprom and established a joint venture company with Gasprom to run the construction and operation of the pipeline and storage facility for the natural gas. It is expected that this gas arrangement will improve gas supply at the Serbian market and increase generation capacity, albeit the problems with the gas heating are expected to continue for years to come.

The Government envisaged numerous other projects for improvement of energy supply at the territory of Serbia. Among other, the construction of pan European oil pipeline is planned in the agreement whose signatory is Serbia. The Government plans organization of investors' conference devoted to construction of this pipeline.

Also, in 2009 the Government of Serbia called for a tender for construction of thermal power plant so-called Kolubara B for which some of the leading companies in the energy area expressed their interest.

## REMAINING ISSUES

The major problems in the energy area are insufficient generation capacity for electric power and energy import dependency. Also, insufficient generation capacity for natural gas used in households for heating and industry is burn-

ing issue every winter. The Government recognizes these problems and it's investing significant efforts to override them. The numerous projects some of which are explained above are envisaged to improve energy supply at the Serbian market. However, low price of electricity and present monopoly of Oil Industry of Serbia (now majority owned by Gasprom) disables further investments and improvements in the energy sector which are desperately needed. The energy sector is not benefiting from current financial situation either due to freeze of the credit market which is, normally, the major source of financing of energy projects.

### FIC RECOMMENDATIONS

- Prepare and offer defined and furbished locations to foreign investors including the entire necessary infrastructure;
- Amend the Energy Law incorporating requirements from the Energy Treaty and implement provisions which provide facilitations for privileged energy producers;
- Increasing public awareness about efficient usage of electricity and need for price increase;
- Terminate the monopoly of Oil Industry of Serbia as early as possible in order to attract potential investors.

# TELECOMMUNICATIONS

## CURRENT SITUATION

Telecommunication operators are still dealing with inadequate regulation covering their business. By-laws still do not exist for many relevant areas of the telecom sector. Relevant by-laws addressing competition and liberalization of various types of services (fixed telephony, data transmission, wireless broadband, digital TV, infrastructure, market analyses etc) are lacking. The great majority of existing by-laws are still dealing with the procedures and manner of technical controls of equipment, networks, and systems, by-laws regulating the procedures of collecting the charges for certificates, permits, and approval in a way lacking clarity and are subject to interpretations.

Three market players are in the Serbian mobile marketplace, while Telekom Serbia, the state-owned fixed and mobile operator, with 20% of OTE - Greece ownership, still has a monopoly in landline network for telecom services. Announcement for potential public tender for offering two additional fixed voice licenses has been declared, and the prospective sale of Telekom Srbija has been delayed few times so far.

Negative development in mobile telephony was made by measure introducing new 10% tax on mobile communication services which was implemented as of June 1st. This measure hardly hit predictability of the telecommunication business and investments with omission of state authorities to consult and inform mobile operators about implementation of the above mentioned tax on mobile communication services. The implementation of tax on mobile phone services mostly affects the users with lower incomes, as well as users in rural areas without fixed lines. The Serbian Government has not clearly defined the period of validity of 10% tax on mobile communication service.

The lack of telecommunications infrastructure is still an essential obstacle for further development of the telecom sector and more efficient business operations. The poor quality of connections, monopoly over telecommunication infrastructure and insufficient speed of internet access are

the key elements for low utilization of modern services, and high speed broadband services.

In addition, diverse interpretations and requirements of local authorities for the same procedures, especially for building base stations, represent an additional problem. This must be prevented by ensuring respecting the regulations which should be applied equally by local authorities, in all parts of Serbia.

It is, therefore, necessary to simplify complete base stations construction and technical control procedures, as well as other procedures surrounding telecommunication business, introduce general authorization for business operation where possible, and bring all the necessary regulation which will enable full competition and predictable business.

According to the Cullen International Report (June 1, 2009) "Supply of services in monitoring regulatory and market developments for electronic communications and information society services in Enlargement Countries", Serbia stands behind countries from the region with the implementation of bellow listed competitive safeguards.

| | HR | MK | TR | AL | BA | ME | RS | XK |
|---|---|---|---|---|---|---|---|---|
| Carrier selection (CS) | ● | ● | ● | ● | ● | ● | ● | ● |
| Carrier pre-selection (CPS) | ● | ● | ● | ● | ● | ● | ● | ● |
| Number portability - fixed | ● | ● | ● | ● | ● | ● | ● | ● |
| Number portability - mobile | ● | ● | ● | ● | ● | ● | ● | ● |
| RIO Fixed | ● | ● | ● | ● | ● | ● | ● | ● |
| RIO Mobile | ● | ● | ● | ● | ● | ● | ● | ● |
| RUO | ● | ● | ● | ● | ● | ● | ● | ● |
| Wholesale broadband access (WBA) | ● | □ | ● | ● | ● | ● | □ | ● |
| Wholesale line rental (WLR) | ● | ● | ● | ● | ● | ● | ● | ● |
| MVNO | ● | ● | ● | ● | ● | ● | ● | □ |
| National roaming | ● | □ | ● | ● | ● | ● | □ | ● |
| Regolatory cost accounting - fixed | ● | ● | ● | ● | ● | ● | ● | ● |
| Regolatory cost accounting - mobile | ● | ● | ● | ● | ● | ● | ● | ● |

Legend: ● implemented - ● not implemented - □ commercial offer

The main policy document of this sector is the Strategy for Telecommunications Development for the period of 2006-2010 that was formally adopted by the Serbian Government in October 2006. Only in January 2009, Serbian Government adopted the clear timeline for realization of Strategy for Telecommunications Development.

Based on the Action Plan for the implementation of Strategy for Telecommunications Development, from 2006 to 2010, drafting of the new Law on Electronic Communications is planned for the Q4 2009, and its adoption is planned for Q1 of 2010. It is anticipated that the new law should be in accordance with the regulatory framework of EU from 2002 and 2007. Understanding the importance of the coming Law, which should be a modern, EU Law regulating this field, we would like to emphasize the necessity for the new law to be harmonized with EU regulation, but also to be swiftly and fully applied in practice, by the independent regulatory bodies.

## POSITIVE DEVELOPMENTS

The Government of Serbia adopted the following strategies: Strategy for Regulatory Reform from 2008 to 2011, envisiging regulatory cut till the end of year 2009 by eliminating redundant regulation and changing deficient one. Telecommunication field is also to be revised. On the proposal of Ministry for Telecommunications and Information society, after series of public consultation, Government adopted Strategy for Digital Switch-Over which should improve technological progress in the country by digital switch over, starting with April 2012. By doing that, part of the spectrum currently used by broadcasters will be freed up for engaging in other technologies offereing high speeed services, and improving the efficiency in the spectrum use.

Strategy for Development of Broadbend and Strategy on Development of E-Government have been drafted and to be adopted in early autamn 2009.

Telekom Srbija and Media Works acquired licenses for fixed wireless access (FWA) for public telecommunication network and services in the range of 411,875 – 418,125 / 421,875 – 428,125 MHz for the territory of Serbia.

Tariff rebalancing introducing 100% increase in prices for landline telephony and introducing same prices in residential and business segments, based on cost principle, was postponed at the end of 2008 by measure of Government due to the financial crises.

Internet liberalization began with the issuing of several by-laws allowing interconnection with the network of foreign country, VoIP regulation and liberalization of wholesale in this domain.

Although RATEL issued By-law on application of Cost Accounting Method, Separate Accounts and reporting by the SMP operators, it's implementation shown to be slow in practice.

Market analyses as the main part of EU regulation in electronic communication aiming at ensuring full competition on the market of electronic communication, is at the very beginning and underdeveloped in practice of the market. By the word of Action Plan, market analyses are set for the Q3 of 2009.

Universal Services regulation is on the way, as well as regulation of E-Government which should improve and speed up relation of the state and the citizens. According to accepted practices, technology neutrality should be the basis for offering universal services and all interested operators should be able to offer the universal services.

Telecom operators took part in the process of Regulatory Reform Strategy in the Republic of Serbia, whose main aim is putting out of force redundant regulations and changing inefficient regulations in all areas of economy including the telecommunication industry.

## REMAINING ISSUES

- The by-laws interpreting the Law on Telecommunications, especially those sections related to competition and implementation of all competitive safeguards have to be issued and adequately implemented;

- Emphasize the full implementation of the existing legal framework in the Republic of Serbia. Namely, before the new Law on Electronic Communication is brought by the Parliament, there are still many provisions provided in the current Law relevant for competition in telecommunications, but not yet applied in the practice;

- All existing alternative infrastructure (i.e. optical cable used for utilities purposes, broadcasting or other) should be opened for all kinds of telecom services;

- IPO of Telekom Serbia, expected in mid 2009, was delayed. It is necessary to introduce more fixed players, before sale to ensure full competition;

- Ensure cooperation of RATEL and Commission for Competition Protection;

- Clear responsibility for the sector development to be determined.

## FIC RECOMMENDATIONS

- It is necessary to have regulatory body capable of implementing new Law on Electronic Telecommunications and undertake proper market analyses;
- Issuing missing by-laws and adjusting the existing in compliance with the EU regulatory standards, requirements and procedures;
- End the bureaucratic procedure surrounding telecommunication business (certificates for equipment, compliance certificates, technical controls to be simplified) ;
- Stimulating broadband services;
- Encourage the development of alternative infrastructure needs;
- Liberalize internal infrastructure and open up for use alternative infrastructure for all kinds of electronic services;
- Introduce provisions and guidelines for eliminating cross-subsidization in telecom sector;
- Continue efforts for restructuring or privatization of state owned telecom companies;
- Rebalance telecommunications tariffs on a cost-based price structure.

# REAL ESTATE AND CONSTRUCTION

## CURRENT SITUATION

New Law on Construction is adopted bringing several important changes. This law is determining conditions and modalities for spatial organizing and planning, development and use of construction land and building construction, supervision of law provisions as well as other issues of importance for spatial planning, construction land development and use and building construction.

Law on construction foresees legalization of properties built without permits till the moment of law adoption with certain exceptions listed in the Law (for example: properties built on protected natural and cultural lands or properties built on public area etc.).This law is very complex since it makes an impact on five very important fields: spatial planning, construction, urban construction land, restitution and legalization, which could cause problems in law implementation and acting practice.

One of the most important innovations of this law is transformation of land usage rights into ownership rights over construction land. Companies that gained the land in the past (under privatization, bankruptcy or execution procedures, or based on previous construction land regulations until 13 May 2003) will be able to transfer the usage rights into ownership rights by paying a fee representing the difference between market value of construction land and costs for acquiring the land rights. New law should also make possible introduction of ownership over construction land after 60 years.

An important change is that the construction permit will be transferable, meaning investor is entitled to concede the construction land and/or object under construction together with construction permit to somebody else under simple administrative procedure.

The law foresees the establishment of Investors registry as a data base of all investors with the goal of preventing manipulations in real-estate and construction market.

The competencies of civil inspection are enlarged, with rights to immediately stop construction in case of incomplete documentation or possible danger to public safety.

All municipalities will have to adopt Urban and spatial municipality plans in a time frame of 18 months, the dismissal of municipal parliament is provided as a penalty for municipality's omission. The llans have to be digitalized and available to citizens.

### Land ownership and real-estate

Current economical situation with its constant pressure to the companies' liquidity as a consequence of growing numbers of non-collectable claims, accounts blockades and illiquidity of companies, as well as neglected obligations to small entities by the state, trading chains and other large and powerful entities influenced real-estate sector. Even though that the first impact of the global economical crisis was overcome due to the high market dependability on local and specialized real estate investors and developers and highly capitalized banking sector, complete market recovery can only be expected as a result of entrance of prime investors that could supply large-scale projects to the market which should be highly stimulated with the changes in the real estate regulations.

Urban construction land that was to remain the sole property of the Republic of Serbia now can be transformed into ownership under the terms prescribed by the new Law on Construction.

A large number of real estate properties in prime locations in Belgrade and in other cities remain under municipal ownership and are leased, but not according to prevailing market conditions. This discourages quality retailers from entering the market. It also contributes largely to the grey economy and reduce revenues to the budget. There is also a large number of other real estate properties which could be taken over through the privatization process of the companies in possession.

Management and Maintenance of residential properties is in the same status from 1995 when the existing law was adopted. Since then no significant changes were made. The Law on Management and Maintenance of residential properties foresees models of residential management with no professional management (volunteered service on amateur basis performed by president of house counsel) but does not obligate residential owners to implement them. General

way of organizing is still cooperation with public communal companies with possibilities to engage privately owned enterprises for specific works.

### Construction

New Law on Cadastre was adopted in August 2009 which will enable more efficient state measurement and creation and maintenance of real-estate cadastre. Law defined the basic principles of cadastre based on European model of land books and other real-estate cadastres with the goal of more transparent and precise records introduced in real-estate cadastre.

Cadastre Project in Serbia is still not finished. Several municipalities in Belgrade (Novi Beograd, Stari Grad, Vračar) finished cadastral land registry system but this process needs to be completed as soon as possible.

Incomplete land books and other land-related records are indisputably a key problem in this area, contributing to the existence of irregularities in a process of obtaining property rights.

Process of construction permits acquiring is still non-transparent, long and bureaucratic, primarily as a consequence of difficult and time consuming process of collecting all documents needed for application (notably the documents related to the rights to land).

### Restitution

Law on Restitution is still not drafted with promise of state government to prepare the draft proposal by the end of 2009 latest.

The priority of restitution is grounded in its tremendous potential for promoting security of property rights in a symbolic and exemplary manner, since it most clearly shows that the state is returning what it unjustly took away.

### Real estate leasing

For the time being, there is no legal framework for Real Estate Leasing in Serbia. Existing Law on Obligations provides only a basis for pure renting of premises without allowing leasing structures. Throughout the entire CEE region Real Estate Leasing has proved to be a flexible and attractive tool for financing office, retail and industrial real estate investments. Both operate and finance lease structures are suitable to finance new investments or refinance existing real estate and thus provide liquidity to companies. As such Real Estate Leasing is supportive in creating new dynamics in real estate investments whilst granting good security to financing institutions.

## POSITIVE DEVELOPMENTS

In regard to the previous year when the general remark on this subject was that very limited progress has been made in the last two years, in 2009 the biggest change was the new set of laws pertaining to the real-estate sector (Law on Planning and Construction, Law on Cadastre and State Survey, Law on Social Housing) adopted in Parliament end of August. Even though it is too early to analyze its future influence, which depending on its implementation and acting in practice, new set of laws could be a major break through for real-estate market. This area is very sensitive, especially regarding restitution and its comprehensive regulation in line with current international legislation and practices is essential for the continuing creation of a favorable and attractive investment and business environment.

### Land ownership and real-estate

New reformed law is adopted, and the process of land acquisition permits several possibilities. It is necessary to wait for the drafting of all indispensable associated by-laws which will upon adoption completely define the conditions and procedures regarding transfer of existing land under usage status in the ownership status.

Mortgage Law 4 years ago has introduced a possibility that a construction permit is re-issued following the foreclosure of a mortgage on a semi finished structure to the name of its acquirer. However such a possibility diverged from the previous Law on Construction, which insisted that the identity of the investor must be maintained throughout the construction venture which is now changed with the new law with transfer possibility.

New Law on Cadastre is adopted with very important clause that every property entering the cadastre should have also the evaluation of its value. This is opening the possibility to regulate and organize this process through adoption of rules

and procedures by State with methodology of mass and single evaluations.

Instead of presently preferred type of land rights - lease of construction land, the new Law on Construction introduces possibility for an investor to gain ownership rights under the terms prescribed in the Law.

### Construction

The overall provisions on acquiring permits according to the new Law on Construction simplify this process but this has to be proven in practice.

New Law on Construction prescribes that construction permit can be transferable, meaning investor can concede the permit to somebody else in case of renouncement of commenced construction.

The construction industry (construction companies) slowly shifts form previously predominantly state-owned to the privately-owned.

Several Municipalities which have established "one-stop" information offices for foreign investors which improved previous issue of needed data inaccessibility due to lack of information and/or unskilled staff.

### Restitution

The new Law on Construction influences also the restitution issues. The main idea behind it is that the owners of the properties should gain the ownership over land. Previous owners of the land where no properties are built will obtain ownership rights and in case when the property exists, the owners should probably be compensated from the Restitution Fund.

## REMAINING ISSUES

### Land ownership and real-estate

After several months long and successful public debate end of 2008 and beginning of 2009 with number of ratified suggestion from interested parties, the government adopted the modified proposal of the new Law which was to implement several completely new legislative solutions on which the interested parties did not have possibilities to give any feedback. This new draft of Law on Construction was sent to Parliament by urgent procedure without proper public debate and no systematic evaluation of its effects on citizens and companies and actual possibilities for its implementation and acting. As already mention, it is necessary to wait the implementation of the new law in practice in order to give the proper comments on its future influence on real-estate market.

Municipalities failed to deprive state-owned construction land from investors, in cases where users haven't constructed a building within the arranged period of time.

Minimum prices of the majority of urban land remains determined through and by Governmental ordinances instead of the market. Moreover, prices differ among municipalities as a consequence of fact that local regulation is vague with imprecise procedures for determining fees for leasehold and site permits.

New Law on Construction foresees also legalization for properties constructed before determination of plans for certain areas, when construction permits were not issued or demanded. Depending on how this law will be implemented some property owners in rural areas could end up in situation of project preparation, filing legislation demands and similar on one side and with their difficult economical situation on the other side. On the other hand some properties are not even built according to the today's standards which could even lead to the procedure for its demolition. It remains to be seen how this law will be implemented in practice.

Clearly defined penalty policy is still not provided for competent local authorities regarding cases of non performance or untimely performance of their authorities (obligations).

No significant improvements have occurred in the previous years regarding residential properties management and maintenance. Law on Management and Maintenance of residential properties from 1995 foresees adoption of by-laws for further regulation of this field but non of those were even drafted until today (legal act on residential properties maintenance from 1993 is still in power).

Financing of residential properties maintenance consider contracts with public communal companies regarding corrective maintenance and emergency services and arranged organized money collection for investment maintenance which in practice is often impossible to implement.

### Construction

The overall process of acquiring permits remains in 2009 non-transparent, long and bureaucratic, primarily as a consequence of difficult and time consuming process of collecting all documents needed for application.

The Cadastre Project, funded by the World Bank is still not completed in Serbia. The project should be finished in 2010 but most probably the deadlines will be breached.

Cadastral land registry system for several municipalities in Belgrade (Novi Beograd, Stari Grad, Vracar) is almost finished and available, but the overall process needs to be completed as soon as possible since incomplete land books and other land-related records are indisputably key problem in this area, contributing to the existence of irregularities in a process of obtaining property rights.

Even though several municipalities have established "one-stop" information offices for foreign investors, the problem with inaccessibility of needed data due to lack of information and/or unskilled staff still exist.

### Restitution

No significant improvements have occurred in the previous year, having in mind substantial achievements made in previous years (Law on Mortgages, Church Property Restitution Law etc.). Law on Restitution should be prepared and adopted as soon as possible. The State government promised to draft the law proposal latest end of 2009 which should be imperative since this law is awaited since year 2000.

Previous projects of new law on privatization of construction land, presented during 2007, were giving priority to restitution in kind over sale but the new Law on Construction foresees practically all compensation in money.

Restitution processes of land titles in past has shown a significant level of inconsistencies and irregularities across the nation, with many situations in which recognition of the right is either unreasonably delayed or, even granted to present owners of structures instead to former owners.

### Real estate leasing

Leasing legislation should provide the possibility of finance lease and off-balance operate lease, favorable for companies' debt/equity ratios.

## FIC RECOMMENDATIONS

- New Law on Construction makes an impact on five very important fields: spatial planning, construction, urban construction land, restitution and legalization. All these fields should be separately regulated through systematic by-laws as soon as possible;
- State government and relevant Ministries should draft and adopt all necessary by-laws and issue clearly defined instruction to the local authorities regarding implementation of new Law on Construction as soon as possible;
- Authorities should be called to introduce transparency and consistency in work on all levels and to conduct higher

level of monitoring and work of all relevant institutions;

- Permits issuing process should be further simplified and Land Development fee together with other construction start up cost should reflect possibility to decrease existing and later operational cost with the goal of further market expansion and speeding up and bringing more investments on this market;
- Penalty policy in the Law on Construction should be re-designed;
- Law on Restitution should be drafted latest end of this year and adopted after public debate beginning of 2010. The extent of reforms made in other sectors demand putting in place a Law with clear and transparent process of restitution of construction land, which would lead to a just and efficient system of land titles and add up to the predictability of the market;
- Law on Cadastre is adopted and its implementation should speed up Cadastre project completion and make real-estate market more transparent;
- New Law on Managing and Maintaining of Properties should be also drafted latest beginning of 2010 and adopted after public debate. It is necessary to have complete legislative regulations and by-laws for definition of residential owners rights and obligations regarding management and maintenance which are indispensable for proper functioning of residential properties management and maintenance;
- State should draft Law on Real Estate Leasing harmonizing it with other Laws being closely connected with Real Estate business;
- Dialogue, communication and long-term cooperation should be built between the state, relevant ministries, local authorities and all other important institution on one side and FIC with its Real-Estate Committee and other organization dealing with real-estate on the other side on strategic issues with the goal of improving real-estate market in best interest of all.

# LABOUR

## THE LABOUR RELATED REGULATIONS

### CURRENT SITUATION

During 2009 there have been important changes in labour related regulations since a number of new regulations came into force while some of the already existing ones have been changed. Namely, the General Collective Agreement signed in April 2008 (hereinafter: the GCA) had its validity extended upon all employers in the Republic of Serbia as of February 11th 2009 based on Decision on its extended application adopted by the Minister for Labour and Social Policy, dated February 3rd 2009. The new Law on Foreigners applies in Serbia as of April 1st 2009; the new Law on Professional Rehabilitation and Employment of Persons with Disabilities came into force on May 23rd 2009 (except for provisions on obligation of employers to employ certain number of persons with disabilities, which have been postponed for one year i.e. will be effective as of May 23, 2010). The new Law on Employment and Insurance in Case of Unemployment came into force also on May 23rd 2009. Also, with the business development and inflow of foreign investments, the local companies have more opportunities to work aboard. In relation to that it is necessary to modernize currently valid Law of Protection of Citizens of Federal Republic of Yugoslavia at Work Abroad ("FRY Official Gazette", No. 24/98 and "RS Official Gazette", No. 101/2005 and 36/2009 - the last version with amends from this year is effective since May 23rd 2009). We note that certain companies use the services of staff leasing agencies whereby the concept of staff leasing is not regulated, but is tolerated in practice.

### POSITIVE DEVELOPMENTS

The state recognized the importance of regulating the labour related issues and adopted several new laws as noted in previous section.

The new Law on Foreigners regulates requirements regarding entering, residing and transit through Serbia of foreigners in accordance with EU standards, and so it provides for 4 different types of visas (Visa A, B, C , D), 3 types of residence (up to 90 days, up to 1 year, permanent residence), possibility of determining that citizens of certain countries may reside in Serbia for 90 days at maximum just on basis of passport or ID card without obtaining temporary residence permit, longer term for applying for temporary residence permit (90 days as of arrival to Serbia) new measures and fines in case of illegal residing etc.

The new Law on Professional Rehabilitation and Employment of Persons with Disabilities has been adopted for a purpose to improve employment status of persons with disabilities, considering that vast majority of the individuals is not working and prescribes measures and activities intended to integrate these individuals into the working environment.

The new Law on Employment and Insurance in Case of Unemployment sets the Government's role in defining annually the employment policies, their financial framework, and categories of population with priorities at seeking employment.

As for the Law of Protection of Citizens of Federal Republic of Yugoslavia at Work Abroad, since 1998, there have been specific alterations made toward reconciliation with provisions of other positive regulations, which partly or entirely regulate part of issues which are pursued by this regulation.

The Labour Law has been amended in Article 116 so to enable employers to send employees to paid leave also in case of decrease in volume of work without employees' fault, for longer than 45 working days per calendar year with the consent of Minister for Labour and Social Policy. It is expected that this change shall result in decreased number of employment terminations due to interruption in work or decrease in volume of work.

### REMAINING ISSUES

#### The General Collective Agreement (GCA)

The extended application of GCA has been the subject of serious criticism by employers who are not members of the Association of Employers that signed the agreement, due to the following reasons: (i) agreement of two parties can be extended to a third party which did not participate in it which creates additional legal uncertainty in already unstable Serbian market; (ii) such extended application gave to the GCA legal

force of a law without undergoing the regular parliamentary procedure for adopting the new law; (iii) the decision on extended application is of political nature, and it is questionable if the legal requirements for its adoption have been met; (iv) content of the GCA which is not in line with the principles of modern market economy (e.g. determining base salary based on coefficient and minimal price of work etc.).

The General Collective Agreement provides more favourable rights to employees in comparison with those set out in the Labour Law on several issues, as well as the duties of employer that are in no relation to protection of employees' rights, such as:

- The GCA mandates calculation of base salary by using the coefficient for the specific work (obsolete method which existed under the old law), as well as restrictions in respect to the term of application of the negotiated base salary for the most simple work (six-month period at the maximum) and its amount (the newly negotiated amount cannot be lower than the previously agreed amount). Such provisions can create problems in practice for the employers who do not have collective agreements or a union, and it seems that based on these provisions, the employers are not allowed to offer annexes to employment contracts to employees regarding reduction of the base salary (even if the employer faces financial difficulties);
- The obligation of the employer to inform the trade union on various issues, such as: annual report on the business operations of the company, on the profit and distribution of profit, information on paid salaries, etc. that have no connection with protection of employees' rights;
- The employer may offer minimum wage only in case of difficulties in business operation and for only up to 6 months during the calendar year, whereby it has to pay back to employees the difference up to the full salary (within 9 months);
- In the case of redundant employees, the minimum severance payment is 1/3 of the employee's salary, or 50% of the average salary in the Republic for each full year of service, whichever is more favourable for the employee (please note that this specific provision is rather unclear and different interpretations are possible). Also, the GCA provides for detailed criteria for determination of the employees whose employment shall be terminated in case of redundancy;
- Termination of employment due to lack of working skills and work results is much more complicated and time consuming and entails forming an employees' committee competent to decide on the alleged lack of working skills and work results;
- Employers are obliged to provide 0.15% of the payroll costs per month for prevention of disability and recreational holiday of their employees (application of this financial provisions has been postponed for unknown period of time);
- The GCA sets out an extensive list of events which may trigger the employee's right to paid leave, as well as additional criteria for increase of annual leave duration;
- Certain salary items are paid at an increased rate compared to the rates set out in the Labour Law: work on a non-working day - 120% of the base salary; night work – 30% of the base salary; allowance for previous years of service – 0.5% for each full year of service, etc. The application of these financial provisions has been postponed for unknown period of time;
- Food allowance is set at the minimum amount of 15% of the average salary in the Republic; allowance for annual leave in the amount of 75% of the average salary in the Republic; field work daily allowance in the amount of 3% of the average salary in the Republic (application of these financial provisions has been postponed for unknown period of time); food allowance during business trips in the country in the amount of 5% of the average salary in the Republic etc.; daily allowance for business trip in the country in the amount of 5% average salary in the Republic;
- The GCA mandates reporting of vacant job position to NES although such obligation does not exist under the new Law on Employment and Insurance in Case of Unemployment;
- The GCA provides for the employers' obligation to insure employees for the case of death, work related injury and decrease or loss of work capacity. It is not clear how to apply this provision, bearing in mind relevant provisions of the Law on Occupational Safety and Health and past interpretation of this law by the competent bodies that this obligation shall not be applicable until this type of insurance is regulated by a separate law.

### The Law on Professional Rehabilitation and Employment of Persons with Disabilities

The Law is terminologically uncoordinated with special laws it refers to which can create practical problems in identifying persons with disabilities.

The assessment of work ability of a person with disabilities (for the purpose of this law) is performed in the PSF and the resolution on assessed work ability is issued by the NES. It is highly probable that such division of competence will result in a longer work ability assessment procedure.

Each employer having at least 20 employees is obliged to employ a certain number of persons with disabilities from May 23rd 2010 (if it has between 20 – 49 employees – 1 person with disability; employer with 50 or more employees - 2 persons with disability and one additional person with disability for each next 50 employees). If the employer fails to do so, it will be obliged to pay penal amount of triple minimum salary for each person with disability the employer failed to employ. Certain categories of employers are exempted from the obligation of employing persons with disabilities (recently established employers, employers participating in financing the salaries of persons with disabilities and employers that fulfil financial obligations arising from certain agreements they have concluded with this company).

### The Law on Foreigners

The Government has still not adopted all bylaws necessary for application of this law. In addition, the law does not apply in full in practice, but only partially (e.g. Visa type D cannot be obtained outside Serbia, but foreigner has to apply for temporary residence when he/she comes to Serbia etc.). The new "white card" has to be obtained every time when the residence permit is prolonged event if the address is not changed.

### The Law on Employment and Insurance in Case of Unemployment

In general, the provisions of the Law regulating employee's rights and compensation amount in case of unemployment are set more restrictively than by the previous law. Unlike the previous law, the Law does not envisage the right to pecuniary compensation in case of consensual termination of employment.

### The Law on Protection of Citizens of Federal Republic of Yugoslavia at Work Abroad

Terminology of the Law is not wholly consistent with terminology of the Labour Law and other positive regulations, which evokes dilemmas which act or acts an employer is obliged to use in order to regulate the matter of relegation of employees to temporary work abroad. Employer's obligation to regulate certain issues concerning relegation of employees to temporary work abroad with official documents or some other acts, including way of selecting an employee for work abroad, is very complexly set, vague and misadjusted to contemporary concept of work and labour relations.

Employer's obligation to advise competent Ministry of Labour and Social Welfare that conditions are met to relegate employee to temporary work abroad 30 days before the relegation, as well as to deliver complete documentation to the Ministry including evidence on paid taxes and contributions, highly slow all the activities of the Employer and it practically results in impossibility to perform activity abroad not only fast, but also not in a compatible term. Further, the Ministry is entitled to demand additional documentation and the term is proceeded. The procedure before Ministry last for 60 days at an average. Without any evidence that information is rendered to the competent Ministry and that the Ministry ascertained that conditions are met, health insurance for employees which is valid abroad cannot be provided through Health Insurance Fund of RS, in accordance with regulations of RS.

### The Labour Law

Since, apart from the change in Article 116, the Labour Law has not been amended in respect to the issues previously detected by the FIC as problematic, we remain at the comments given in the previous editions of the White Book and here we reiterate just the most prominent issues:

- Issues in relation to employment of foreigners: temporary employment limited to one year is mandatory which can be insufficient in practice; obtaining business visas and temporary residence permits is an excessively complicated and time consuming process even under the new Law on Foreigners; each transfer of funds abroad by foreigners entails gathering a large number of documents and evidence that need to be submitted to the bank;

- Pursuant to the current law and GCA, the calculation of salary is more complex than the previous calculation and the payroll list has to be signed by the employee which can be very technically complicated in practice;
- Salary compensation for absence during sick leave, national holidays, annual leave, paid leave etc. is calculated on the basis which represents the average salary in the three preceding months (Articles 114 and 115). In case of high one-off payments in one month (such as annual bonuses) such salary compensation could be substantially higher than the salary itself if the employee had not been absent. Additionally, this results in employers' failure to plan their budget;
- Generally, the employment related paperwork and records that should be kept with each employer are overly voluminous;
- An employee whose employment contract is terminated due to unsatisfactory work performance and/or lack of required knowledge/abilities is entitled to notice period in duration between 1 to 3 months, depending on the total number of years of employment service. The GCA makes this termination even more complicated by mandating formation of committee competent to decide on the alleged lack of working skills and work results;
- An employer is obliged to issue a decision regarding annual leave at least 15 days prior to date the requested annual leave would begin which is usually not possible in practice;
- It is not possible for persons on maternity leave to return to work on a part-time basis during the leave and achieve proportional maternity benefits;
- The level of contributions to the regional chambers of commerce which are calculated on the gross salary level varies throughout Serbia which complicates the introduction of a unified payroll calculation system for companies employing individuals throughout Serbia;
- Certain categories of employees cannot be unilaterally terminated as redundant by the employer even if they consent to the termination (pregnant woman, woman on maternity, childcare leave or special childcare leave, trade union representatives);
- The business trip in the country is not defined by the law;
- The law allows employer to offer annex to employment contract only in cases listed in Article 171 which do not encompass all practical cases when it is necessary to sign the annex.

## FIC RECOMMENDATIONS

Because the regulations listed in the above text are considered particularly important and vital for attracting and maintaining foreign investments, the FIC has a number of suggestions on how to improve the situation.

### The GCA

The extended application of the GCA should be put out of force due to the reasons listed above. If not, here are the recommendations whereby they under no circumstances mean that employers-members of FIC agree with the GCA.

- The coefficient system for determining base salary should be left out the GCA as obsolete and non-practical.
- We suggest deleting Article 55 of the GCA which provide for employer's duty to inform trade union on the certain business issues since the issues are related to the business operations of the company, vast majority of the issues represents trade secret and they are in no relation to employees' status.
- There should be no limits in respect of payment and duration of minimal salary. Otherwise, the employers could be sent off in bankruptcy.
- Clarify the severance payment provision in case of redundancy; simplify criteria for determining redundant employees;

- In case of professional inadequacy there should be no need to form committee but employer can evidence the reason for termination in other suitable manner.

- The employer should be entitled (not obliged) to provide means for prevention of disability and recreational holiday of its employees at any amount it finds suitable or agrees about with the union without setting mandatory minimum and the fund should be kept with the specific employer.

- Outside the cases mandated by the Labour Law, employers should have freedom to provide employees with paid leave and increase in annual leave in cases and duration agreed with the trade union, specific employee or at the sole discretion.

- Since there is no duty to recruit thorough NES, employer should have the right to announce vacant job position, but it does not have to be obliged to do so;

- The GCA obligation to insure employees for the case of death, work related injury and decrease or loss of work capacity should be coordinated with the same obligation provided by the Law on Occupational Safety and Health.

### The Law on Professional Rehabilitation and Employment of Persons with Disabilities

- The law should be terminologically coordinated with special laws in the area;

- The work ability assessment and issuance of resolution on assessed work ability should be performed by the same body in order to shorten the procedure. We would suggest assigning the procedure to a competent body other then PSF considering that PSF already has significant volume of work;

- We believe that more efficient manner for achieving the higher employment rate of persons with disabilities would be stimulating employers to employ such persons by way of beneficial measures (e.g. lower income tax and social contribution rates, financial means granted by the state etc.) rather than punishing them for non-compliance. In addition, there are business activities for which performance it is practically impossible to employ a person with disability (construction etc.).

### The Law on Foreigners

- The Government should adopt all bylaws necessary for application of this law as soon as possible in order to make the law operational. Enhance practical application of law and make sure that it applies in full in practice. In case the address has not been changed, it should not be necessary to obtain new "white card" when extending the residence permit.

### The Law on Protection of Citizens of Federal Republic of Yugoslavia at Work Abroad

- The Law should be modernized, attuned with terminology of the Labour Law and other relevant regulations and adjusted to new business terms. Since new possibilities are opened up for localized companies to perform series of jobs abroad through their employees, fast mobility of employees should be provided, together with reduction of administrative obstacles and needlessly long procedures. Alternative is to suspend this Law and regulate by the Labour Law essential issues connected to protection Serbian employees at work abroad.

### Staff Leasing

- The concept if staff leasing should be regulated by a separate regulation which would govern all important issues in

respect to this (relation of employer and individual, employer and service user, employee and service user, occupational health and safety etc.).

## The Labour Law

- We believe that additional decreases in labour expenses are necessary in order to boost the employment rate and reduce the so-called "moonlighting." This can be accomplished through either further reductions of the income tax rate and the income amount exempt from taxation, or by a reduction in social security contributions;
- The changes in the area of employment for foreign citizens must contribute to a positive environment for foreign investments, such as the temporary work permit time limits should be extended to 3 years, the procedure of obtaining business visas and temporary residence permits should be made far less complicated and time consuming and the procedure for transfer of funds abroad by employed foreigners should be simplified;
- We suggest that salary compensation during absence due to sick leave, national holidays, annual leave, paid leave is due in the amount of base salary increased by seniority;
- Employment related paperwork should be simplified by introducing electronic delivery of documents and electronic data bases and implementation of the electronic signatures rules. In relation to that paragraph 5 of Article 122 of the law should be deleted;
- In case of professional inadequacy there should be no need to form committee but employer can evidence the reason for termination in other suitable manner. The dismissal period should not be longer than 15 days;
- Amend the Law to reduce the deadline for issuing the annual leave decision to 5 days prior to the commencement of annual leave or even less in specific cases. In dynamic, fast-changing work environments, such as foreign companies, annual leave is often agreed upon on short notice, especially when it comes to management;
- The employment regulations should provide for the possibility of persons on maternity leave to start working on a part time basis during the leave and achieve maternity benefits on a pro rata basis;
- The contributions to regional chambers of commerce should be unified throughout Serbia;
- The employees protected from termination based on redundancy should have the right to give their consent to such termination, in which case they would be entitled to unemployment benefits;
- The business trip in the country should be defined as any trip outside the place of work made at employer's request and for the purpose of performing certain job. However, such trip should not be construed as business trip if the nature of employee's job position entails frequent trips outside the place of work (e.g. professional drivers, regional sales specialist etc.);
- Stipulate that outside the cases listed in Article 171, annex to employment contract can be signed also in other cases, based on mutual agreement of the employer and employee.

# HUMAN CAPITAL

## CURRENT SITUATION

Labour market in Serbia is showing the same trend as the rest of the economy- it has shrunk. In order to reduce expenses, many companies have decided to reduce their headcount. The Government had to balance between growing budgetary deficit and companies' needs to receive support through salary tax incentives which could help to control or slow down downsizing processes. However, comparing to previous years, number of unemployed citizens of Serbia has officially been increased by more than 2%.

In such circumstances, unlike in previous years and only due to a decreased demand, supply of qualified workforce has been improved, especially of fresh college graduates.

In times of crisis and economic downturn, human capital becomes increasingly important. Although the demand on the labour market has been reduced, and therefore there are less job opportunities, retention of key personnel is in the focus of HR professionals more than ever, as this is the key to survive the crisis. Therefore, mature companies tend to defend their high-potentials even more, and it's still difficult to find both suitable and immediately ready candidates to take over important strategic positions in companies.

Mindset of young people, entrants to the Serbian labour market is changing with time. They pay more and more attention to the companies which will provide them with up-to-date functional knowledge and trainings, which they were not able to get as a part of their formal education. Also, the mobility of young people is increasing, slowly but surely. There are many companies with very good business practice and solid reputation outside Belgrade, and young people are increasingly ready to move in order to work for them. However, Belgrade remains the most attractive location for young people to live at. There is also a risk for "brain-drain", as many young people wish to leave and work outside the country.

There are certain changes in the education system. Universities and colleges are now in a competitive market, and most of them recognized this fact. They started with changes in order to position themselves as well as possible with regard to their competitors. Serbia has introduced the Bologna Process which will surely bring positive changes to the education system. Still, not many faculties are able to provide practical knowledge, which obliges the companies to invest significant funds in education and training of hired fresh graduates.

## POSITIVE DEVELOPMENTS

The Serbian Government has introduced some proactive measures in the crisis times. When it comes to human capital, Ministry of Economy and Regional Development has launched initiative to sponsor employment of 10,000 apprentices, which was very well accepted by the business community as well as the young graduates.

Ministry of Youth and Sports has brought National Youth Strategy, which was adopted by the Government. Main aim of the strategy is youth activism and their participation in all social processes. Young Talents Fund has granted more than 2,200 scholarships, number of active Municipal Youth Offices was increased from 5 to 88, over 43,000 young people were engaged in different activities, such as different projects, entrepreneurship training etc. Main aim of all these activities is to raise employment capacity of young people and to motivate them to stay in Serbia.

Implementation of the Bologna Process has been rated with mark of 3,8 which ranks Serbia as 24 out of 46 countries that implemented Bologne Declaration.

Department of Occupational Health and Safety from the Ministry of Labour and Social Politics has continued their efforts to promote safe and healthy working environment, by facilitating different activities, such as campaigns, seminars, trainings, meetings etc. Work on transposition and implementation of European OH&S standards has continued in 2009.

## REMAINING ISSUES

Minister of Labour and Social Politics has extended validity of General Collective Agreement to all employers in Serbia. This extension has two main implications. First, values that are promoted in GCA are obsolete, and many parts of the Agreement are not referring to employees' rights at all, and still, they are

being imposed to all companies in Serbia. Second, GCA creates additional burden to all employers in Serbia, which could be counter-productive in the crisis and could lead to either reduction of salaries, or even headcount reduction in those companies which are not able to spend more money in labour costs. This extension has been rated quite negatively by the business community, both in Serbia and abroad, because it decreases predictability of the legal framework in Serbia, which can discourage potential investors.

Grey and black labour market in Serbia has increased in 2009. Since there are a number of companies which aren't paying their obligations to the State, in order to cover budgetary deficit the Government is occasionally announcing new salary taxes. This would affect those employees whose companies are paying all their salaries and appropriate taxes regularly. Instead of additionally burdening them, it would be more effective to reduce grey and black labour market by increasing Labour Inspection activities in the field.

Development of human capital is one of the most important tasks, it has very broad implementation on country's progress, and therefore all stakeholders should be devoted to it. Nowadays, quality and structure of work force on the market could make a difference in company's decision to invest in certain country.

The Education system still has to be improved and better connected to business community. By doing so, the gap between education and competency requirements of companies would be reduced, and image of Serbia as potential investment location would be improved.

Negative demographic trends should also be mentioned. Population of Serbia is getting older, right now Serbia is ranked 6$^{th}$ among countries with oldest population in the world. Also, population is getting more and more grouped in the northern part of the country. The Government has recognized these trends, but the situation hasn't been improving. This situation will further reduce chances of certain parts of Serbia to attract new investments.

## FIC RECOMMENDATIONS

- Detailed revision of the Labour Law is needed in order to balance most important interests of employees, employers and the State, which would bring more stability and predictability to the labour issues. This revision could only be done in social dialogue between all relevant stakeholders, and through reaching consensus in the most important issues;
- The Government should stop extension of the GCA for all employers who are not members of the Serbian Association of Employers;
- Positive measures which stimulate employment should be continued;
- Education system should be improved. Regular contact between FIC and the Government, ministries of Education and Youth, as well as with the universities, is crucial for that. Business community and FIC members are ready to provide support and expertise;
- Continue joint proactive engagement of the FIC and Ministry of Diaspora in order to attract highly skilled and educated workforce currently abroad, to return to Serbia.

# LEGAL FRAMEWORK

White Book 2009 is written in the light of a large number of new laws that have been adopted by the Serbian Parliament since its previous edition in September 2008. Apart to budget laws, reflecting to some extent the global economic crisis, a legislative activity has been mainly related to the implementation of provisions of the Interim Agreement with the European Union and harmonization with the European Union laws and standards. Majority of the mentioned laws are of the great importance to foreign investors, such as Law on Foreign Trade, Law on Prevention of Money Laundry and Financing of Terrorism, Law on Protection of Competition and various environmental laws. In addition, in 2009, the Serbian Government provided several bills and proposed drafts of the laws (such as laws related to the IP rights, consumers' protection, trade) aimed at further alignment of national legislation with European standards. In this respect, potential investors are likely to be encouraged by the prospect of Serbia's eventual membership of the European Union and accordingly, the progressive incorporation of the *Acquis Communautaire* into Serbian law should provide more transparent environment for all. In addition, the fact that Serbia has joined to the countries which are still implementing or having already implemented the Regulatory Guillotine process, is a good signal indicating an improvement of the business environment and operations of foreign investors. However, it is yet to be seen in next year how this process will result.

However, regardless to this important progress made in 2009, it is essential to establish an efficient mechanism that should provide implementation of the new laws. It requires not only an adoption of various bylaws by the competent authorities but also assumes an effective public administration and teamwork with the all stakeholders. Thus, it is yet to be assessed what improvements the mentioned new laws will bring in reality.

On the other hand, Serbian legal framework is still not enough clear and predictable, and many regulations need to be improved and harmonized. Also, some important laws, and particularly bylaws required for implementation of the existing laws are still missing. In practice, the same problems remain. A public administration and judiciary are not efficient and transparent enough, which often results in inconsistent implementation of the laws and very lengthy procedures. Thus, the capacity-building and further specialization of the public administration and judiciary is crucial.

# SERBIAN BUSINESS REGISTERS AGENCY

## CURRENT SITUATION

The Business Registers Agency was established according to the Law on Business Registers Agency with the aim to implement regulations of the Law on Companies Registration and the new Companies Law as well as the Law on Financial Leasing and the Law on Pledges on Movable Property and Rights to be entered into the Register.

All these laws have been adopted in order to initiate the reform which would enable investors to quickly start their business operations in Serbia. It was clear from the very beginning that this was only a part of the reform, since starting of business operations is connected with many other judicial and administrative institutions on which the starting of a commercial entity depends.

The core activity of the Agency is to register data in respective registers, to form them as centralized, electronic and public databases, and to act as a supervisory body. In order to decrease the grey economy and corruption, all data registered at the Agency are available online on the website of the Agency free of charge. The Business Registers Agency is an example of a successful reform, with the following registers:

### Companies register

Since its commencement on January 1, 2005, the Agency succeeded to re-register from the court register all active and inactive existing companies, (73,000 active and 160,000 inactive) and not to cause any delay in incorporating new companies, and deleting and registering changes regarding existing companies. All kinds of registration, incorporation, changes and issuing of excerpts and certificates from the Register have always been executed within the legal deadline of 10 days in the beginning and then 5 days, while today almost all registrations are carried out in 1-3 days. Currently, there are 108,686 active companies.

### Register of entrepreneurs

Since the beginning, on January 1, 2006, the Agency managed to re-register 165,000 active entrepreneurs from registers of 164 municipal administrative bodies which have been keeping those registers until that day. When this register started, legal deadline for incorporation was only 5 days. Today, the registration of entrepreneurs is carried out in most cases within a day, and 4 days at most. Foreign investors are interested in entrepreneurs only in terms of cooperation, but not for investment as well, which is explained below. Currently, there are 223.130 registered entrepreneurs.

#### Sub-register of financial reports

The Agency conducts the segment of registered data regarding financial reports in a very simple way, within the database of companies. The Agency has data on the business condition of all companies and for those entrepreneurs as prescribed by the Law on Accounting and Audit for years 2005, 2006 and 2007. In May 2009, data for 2008 were also published.

### Register of Financial Leasing

From the very beginning on January 1, 2005, financial leasing has been a very successful register of all leasing agreements entered not only since the beginning of the register's operations, but also a year before its start. Apart from providing legal certainty, it has excellent statistical data on countries where the goods bought through leasing came from, as well as on the structure of leasing, showing from year to year that more and more machines for production are imported from abroad, while the number of luxury and expendable goods decreases. Currently, there are 62,108 registered financial leasing agreements.

### Register of Pledge on Movable Property and Rights to be Entered into the Register

This register is operational since August 2005. It has completely adopted the novelty provided by electronic registers regarding the pledge – now taking effect not through the delivery of property, but with registration into the public register. A high level of safety has been provided to the creditors this way, mostly to banks and other financial institutions. As well as in other registers, all data are available, including creditor, debtor, owner of property, amount of debt, duration of pledge as well as sequence of pledge creditors. Both legal and contractual pledges are registered. Currently, there are 49,251 pledge agreements.

## POSITIVE DEVELOPMENTS

According to assessment of international organizations, the Agency for Business Registers remained the only part of administrative system for starting business operations subject to

reform with a successful outcome. The Agency is also trying to prompt reform in other government institutions. During 2007 a new, much better and user friendly website was launched, part of which is available in English.

In May 2009, the Agency registered first company in a shortened procedure in a so-called One-Stop Shop system in which as many activities as possible needed for starting business operations are initiated before the Agency. This includes activities such as: obtaining of the tax identification number and application for pension and social insurance. Instead of going to 4 separate authorities for registration, the applicant will submit all registration documents to the Agency for Business Registers which will then proceed with the registration of the applicant within the Tax Administration, Pension and Social Insurance Fund and Health Insurance Fund. This facilitated and shortened registration procedure by at least 3-4 working days.

The Agency also participates, as much as it can, in the drafting of amendments to legislation referring to it directly or indirectly. The Agency keeps track of all irregularities which it encounters through its activities and tries to correct them. Currently, the Agency is involved in comprehensive legal reform in Serbia which should result in abolishment of all unnecessary regulations.

## REMAINING ISSUES

The main remaining problem is essentially in the lack of good will of the rigid administrative system to get rid of the unnecessary paperwork, forms in which the same data are always entered, numerous signatures and endless stamps. A particularly big problem is the refusal of all administrative bodies to eliminate its complicated, unreliable and always different numbers and to accept only one identification number of a company, which in our opinion should be the ID number generated by the Statistics Administration which has the least, almost accidental error percentage. The Agency for Business Registers accepted this number as its own registration number and thus eliminates at least one company number from the system.

A further problem is that banks, actually the National Bank of Serbia, interpret the Anti-Money Laundering Act too rigidly. This demand, like nowhere else in the world and without any legal grounds, makes it very difficult for foreign investors to open a company bank account and of recently to open a temporary bank account for payment of foundation capital, because the bank requires evidence on the chain of founders of the founding company, until a natural person at the end of the chain is reached.

Finally, we consider that the biggest problem is that in Serbia, an entrepreneur as a form of business organization still exists, as a relic from socialist economy and socially owned property – but not as a legal entity, but as a natural person individually performing its activity, which is registered and having some specific characteristics for legal entities. This confuses foreign investors because all property of this entity is actually personal property of an entrepreneur, whether it is used for performing business operations or not.

## FIC RECOMMENDATIONS

- The Agency should participate in legislative activities regarding complete abolishment of the Law on Entrepreneurs;
- Participation of the Agency in the regulation of the status of an entrepreneur, as well as in the introduction of micro companies, which are currently not foreseen by the law;
- Providing incentives for greater connection of the Agency for further improvement of the One-Stop Shop system by enabling the Agency to accept even the demand for opening of the bank account in the registration procedure.

# COMPANY LAW

## CURRENT SITUATION

The Company Law in effect today has been enacted in 2004. Adjustments with the old law were completed in 2005, except for the few provisions dealing with socially owned companies that are entering the privatization process. The Law has not been amended since. The Company Law applies to the company's registration and governance in general and that special laws are in effect for banking, insurance, financial leasing and listing on the stock exchange. In that sense, the Company Law applies only as a supplement or where those laws specifically refer to it.

The current Company Law is in need of being adjusted with other legislation and market developments in the country. Namely, the conflict of laws between the Company Law and the Securities Law threatens to slow down the companies and market development in Serbia. The Government formed a working group in 2008 with the task to amend the Company Law in line with EU and international best practices and adjust its provisions to provisions of other laws, including Securities Law and Foreign Investment Law.

The Company Law defines four forms in which a company may be established. Those are:

- Partnership;
- Limited partnership;
- Limited Liability Company;
- Joint Stock Company.

No minimal requirement is set by the Law in terms of the share capital for partnership and limited partnership. Partners/ founders in those companies bear full personal liability for the obligations of the company. Limited Partnerships hardly exist in practice, while Partnerships are a bit more frequent. The Law prescribes that at least two persons are required to be the founders of such a company. According to the Company Law, legal entities can also be founders and owners of such a company. Due to its characteristics, based on the ease of functioning, and on the fact that a relatively small founding amount is required (500 EUR), the Limited Liability Company is by far the most common form established in Serbia. The Law prescribes the minimum of one, and the maximum of fifty persons who may be shareholders. For more than fifty shareholders the company would have to be transformed from a Limited Liability Company into a Joint Stock Company. As far as liability is concerned, the Limited Liability Company is liable to its creditors only with its assets, and not with the property of its owners. The only exception is in the case when owners damage the company for unlawful or deceptive purposes ("lifting the veil").

Joint Stock Companies can be founded as close-end (share capital must be at least 10,000 EUR) or those open to the public (where significantly higher share capital is required, 25,000 EUR). Closed Joint Stock Companies are defined as companies whose shares are published only to its founders or to a limited number of persons in accordance with the law. Open Joint Stock Companies are defined as those for whose inscription and payment of the shares by a public invitation is mandatory either at the moment of its incorporation or at any time after that. Both domestic and foreign persons can be founders of a Joint Stock Company.

Foreign entities are permitted to open representative offices in Serbia. Representative offices are registered with the Business Registration Agency. They are not legal entities and can not be engaged in commercial activities within Serbia, but they can be used for marketing purposes and for providing assistance to the company they represent in closing the deals inside Serbia. On the other hand, branches can also be established by the foreign entities, and they are permitted to do business in Serbia.

## POSITIVE DEVELOPMENTS

Ongoing work on amendments and modifications of the Company Law as explained above is the true positive development since the last edition of the White Book. During years of implementation, a number of practitioners and academics noted that the Law has certain loopholes and inconsistencies, hence Government of Serbia initiated work on its improvement.

## REMAINING ISSUES

- In case of disputes, the Company Law provides for the exclusive jurisdiction of the commercial court of the seat of incorporation which is not in line with the Law on Foreign In-

vestments which provides the possibility for disputes arising out of foreign investments to be settled before Serbian courts or before foreign or Serbian arbitration;

- The Company Law regulates open and close-end joint stock companies, and makes a reference to procedures in the Law on Securities Market, which do not exist. The consequence of this is that all companies have to be open-end joint stock companies, while a closing procedure has not been regulated. The Company Law does not define clearly the procedure for transforming an open Joint-Stock company into a closed one;

- The shares of a closed Joint Stock company are not recognized as securities by the Securities Act, even though they are subject to recording on the securities account held with the Central Registry of Securities. Absence of rules applicable to shares of a closed Joint Stock company resulted in discretionary powers of the Central Registry of Securities and inconsistency of practice related to trading in such shares, including creation of pledge and pledge enforcement mechanisms. This loophole is misused in practice by the Securities Commission which uses it to support its point of view about the impossibility to change publicly quoted companies into privately owned companies;

- The provisions on legal consequences of the decrease in the value of charter capital are impossible for implementation. These provisions provide for the beginning of the liquidation in case the value of charter capital doesn't reach the required minimum value within 6 months. At the same time, the liquidation provisions of the Company Law do not provide for the liquidation in case the value of the charter capital has been decreased;

- The current provisions of the Company Law regarding a squeeze out procedure enable any person who acquired 95% of the total shares in an open joint stock company to buy out the remaining shares. However, this right can be exercised only if the threshold of 95% was reached by public takeover bid in accordance with the Securities Law, and only within 180 days from the launching of the takeover bid and hence, any legal entity which reached this threshold other then through public take over bid (for example through capital increase or acquisition on the stock exchange) is not allowed to launch a squeeze out procedure;

- There are several provisions in the Company Law relating to open Joint Stock companies that should be amended because they unnecessarily require deference to the Securities Law and decision-making by the Securities Commission in matters that are essentially company law matters;

- In order to bring the Company Law into harmony with modern corporate governance principles, a number of changes are necessary. Because of the different structures and functions of a supervisory board, audit committee, and internal audit function in modern corporate governance practice, the law should clearly distinguish between these bodies.

## FIC RECOMMENDATIONS

- It is necessary for the provisions on exclusive jurisdiction in case of dispute resolution to be harmonized with the Foreign Investment Law;
- The concept of a closed Joint Stock company should be either further developed by providing clear rules applicable to this corporate form, including a general rule of applicability of provisions related to the Limited Liability company in the absence of specific provisions for a closed Joint Stock company or the concept of so called closed and open Joint Stock companies should be abandoned;
- It is necessary to adjust the provisions on maintenance of the charter capital value with the provisions on liquidation of the companies;

- The provisions on squeeze-out should be amended so that squeeze out procedure can be carried out when the relevant threshold is reached and shouldn't depend on the successful public take over bid aiming at reaching the threshold of 95% of total shares. There should also be no time limitation to exercise this right;

- In order to address the problems regarding harmonization of the Securities Law and the Company Law, among other, there should be following changes:

  - with respect to listed and unlisted companies, there should be comprehensive coverage of this matter in the Law on Securities and Other Financial Instruments Market;
  - with respect to introduction of stock-exchange trade and open stock-exchange trade, a difference should be made between the stock-exchange market and open stock-exchange market;
  - the Securities Commission shall be removed from the unnecessary process of approving an increase in capital after shareholders have already made an investment decision to provide the additional capital.

- With respect to corporate governance, the Law should be amended in a following manner:

  - the concept of the supervisory board, as currently constituted, should be revised and amended so that there is only one shareholder-elected board, called either the "supervisory board" or the "board of directors" responsible for overseeing the management and business affairs of the company;
  - the Law should provide for an audit committee in most companies as optional, and should require as mandatory an audit committee in listed companies which should consist of independent members of the board who has functions pertaining primarily to overseeing the internal audit function, the external audit process, and financial reporting;
  - the Company Law should require an internal audit function in all listed companies. The internal audit function should consist of full-time staff members and the head of the internal audit function should report to the board, either directly or through the board's audit committee.

# SECURITIES MARKET TRENDS

## CURRENT SITUATION

From the day the last edition of the White Book (White Book 2008) was published there have been no significant developments in relation to the securities market regulations in Serbia. The decreasing trend of securities trade on the Serbian market in the first half of 2009 was generally result of global financial crisis, nevertheless it was also enhanced by slow process of reform of the securities market regulations.

Namely, the Proposal of the Law on Amendments and Supplements to the Law on Market of Securities and Other Financial Instruments is still in the National Assembly procedure while it seems that the Draft Law on Securitization is completely forgotten. The only noteworthy recent activity of the National Assembly in relation to securities market regulations is adoption of amendments to the Law on Investment Funds in July 2009.

General conclusion is that Serbia needs significant changes of the securities market regulations in order to attract more international investors, these changes should in particular allow clear legal basis for the announced IPO's.

Since the Draft Amendments to the Law on Market of Securities and Other Financial Instruments and the Draft Law on Securitization were subject of the FIC review in the previous edition of the White Book hereby we once again present the main concerns of the FIC members relating to these two documents. Furthermore we also present our review of recently adopted changes of the Law on Investment Funds.

On the other hand In relation to the takeover bid, with the Opinions of the Ministry of Finance dated February 2nd, 2009 and May 22nd 2009 and Opinions of the Securities Commission dated July 14th 2009 and August 7th 2009, significant developments in respect to the interpretation of the takeover bid regulations have been introduced.

By its opinion dated February 2nd 2009, Ministry of Finance, after having the joint session with the representatives of the Securities Commission came to the following conclusions:

- that in case of contribution of shares of Serbian open joint stock company into the limited liability company in excess of 25%, this limited liability company is to be considered as acquirer of shares and thus obliged to launch the mandatory takeover bid;
- that in case of disposal of shareholding in limited liability company, which holds shares of Serbian open joint stock company, the acquirer of such shareholding therewith becoming indirect holder of shares of Serbian open joint stock company is obliged to launch mandatory takeover bid for the remaining shares of the Serbian open joint stock company if by such acquisition reaches the limits prescribed in the Takeover Law and its Article 6.

By its opinion dated July 14th 2009, Securities Commission has further developed standpoints from the above-described Opinion of the Ministry of Finance. Namely, the acquirer of the shareholding in limited liability company which holds directly or indirectly (through its subsidiary) shares of Serbian open joint stock company has the obligation to launch the takeover bid for remaining shares of both, directly owned Serbian joint stock company and its subsidiary, being Serbian open joint stock company. All this in case if acquirer by such acquisition indirectly reaches the limits prescribed in the Takeover Law and its Article 6. This is irrespective whether a Limited Liability Company is domestic or foreign legal entity.

By its Opinion issued on May 22nd 2009, the Ministry of Finance provided the guidelines and explanations regarding the implementation of the provisions of the Takeover Law concerning the moment in which the obligation to publish the takeover bid occurs. Under the said Opinion this obligation arises at the moment in which the agreement constituting the legal ground for the acquisition of more than 25% of the shares of the open joint stock company (combined with the shares previously obtained, as the case may be) has been concluded, even if the validity of the agreement is placed under a condition precedent, such as the concentration approval by the Commission for Protection of the Competition.

Furthermore, the Opinion of the Securities Commission published on August 7th, 2009 introduced changes regarding the price of a single share targeted by the takeover bid in cases in which the obligation to launch such bid occurred upon acquiring limited liability company holding shares in a Serbian open joint stock company. The Securities Commission took

a stance, that in the case when the limited liability company is acquired solely for the purposes of the acquisition of the shares in targeted open joint stock company(ies), the price of the shareholding in the limited liability company should be considered as relevant for determining the price in the takeover bid. If not, the price is to be determined applying the rules set out by Takeover Law.

## POSITIVE DEVELOPMENTS

As mentioned above, in July 2009 the National Assembly of the Republic of Serbia has adopted the Law on Amendments and Supplements to the Law on Investment Funds. The Law introduce several positive novelties, which according to the proposer's explanation are introduced as an answer to global crisis challenges and existing issues in current business activities of investment funds. The future results of these changes are yet to be seen.

As the first important novelty the Law provides possibility for the management companies to, directly or indirectly, acquire investment units or shares of an investment fund which it manages up to 20% of the net value of the fund's assets. The amendments also allows management company to possess (directly or indirectly) share in the capital of the private investment fund which it manages.

The Law further introduces possibility of investing investment funds' assets (with 20% restriction) into investment units of open investment funds.

The important novelty is also provision according to which the assets of an investment fund may be invested abroad in accordance with foreign currency activities regulations.

According to the Law the management companies are now obliged to engage at least one portfolio manager (employed for indefinite period of time) instead of previous obligation of engaging at least one portfolio manager for each fund managed. The Law also clearly divides responsibilities of the management of the management company which shall define investment politics and goals while portfolio manager shall be responsible for execution of such politics and goals.

According to the amended Article 32 the investment restrictions may be exceeded during the first six months from the day of investment fund foundation.

The Law also introduces possibility for entities other than banks and broker-dealer companies to provide sales services as agents in accordance with the regulations which should be adopted by the Securities Commission. We are expecting that respective regulations will be adopted very soon.

Instead of previously stipulated 10% the amended Law enables a member of an open investment fund to acquire up to 20% of the net assets value of the open investment fund.

Finally, the Law allows management company to (in its own name and for the account of an open fund) take a debt with the repayment term up to 360 days (instead of previously stipulated 90 days) by means of loan agreement and repo agreements with other investment funds or banks (with restriction of up to 20% of the net assets value of the fund).

## REMAINING ISSUES

The main issues remaining in relation to the securities market regulations, (most of them already presented in the White Book 2008):

- Proposed Law on Amendments and Supplements to the Law on Market of Securities and Other Financial Instruments are still in Parliament procedure;

- Proposed Law on Amendments and Supplements to the Law on Market of Securities and Other Financial Instruments leave certain unsettled issues, the main being:

  - preliminary notification rules are not clear enough;
  - the final sale i.e. actual subscription and payment for securities still should be made based on the fixed price contained in the prospectus approved by the Commission for Securities; at the same time pricing rules in relation to the new issuances of shares set by the Company Law remain applicable, so that there is collision of two laws in this respect, or the pricing range to be included in the preliminary notification could be established only within the boundaries set by the Company Law;

- lack of by-laws needed for the implementation of IPO.

- Draft law on Securitization is not in the National Assembly procedure;

- The presented Opinions of the Ministry of Finance and the Securities Commission and therewith-introduced interpretation of the Takeover Law shall significantly influence so far established practice in Serbia. Partially, these interpretations could be seen as contradictable to the basic principles of the Serbian contractual law and the Law on Market of Securities and Other Financial Instruments in regard to the provisions dealing with the moment of the acquisition of shares.

## FIC RECOMMENDATIONS

- Harmonize all regulations related to securities with EU and other international standards, in order to increase trust of foreign investors. In that sense the adoption of new Law on securities market and the Law on Takeover of Joint Stock Companies is required;
- Amendments to the Law on Market of Securities and Other Financial Instruments should be adopted as soon as possible;
- Amendments to the Law on Market of Securities and Other Financial Instruments should include book building possibility to a greater extent;
- Once the amendments to the Law on Market of Securities and Other Financial Instruments to the Law are enacted in the National Assembly additional explanations and Clarifications of instruments introduced by the said amendments will and have to be contained in by-laws that are yet to be enacted by both the Commission for Securities and the Belgrade Stock Exchange;
- It is necessary to adopt regulations on establishing and work of credit rating agencies, as well as control of work of these agencies;
- Pricing rules for share issuance should not be defined by the Company Law, or exemptions in case of IPOs should be introduced;
- Draft Law on Securitization should be included in the National Assembly procedure and adopted as soon as possible;
- The Securities Commission should as soon as possible adopt all necessary by-laws in accordance with the amended Law on Investment Funds (i.e. in the term stipulated by the Law);
- Contradictions arising from interpretations provided in Opinions of the Ministry of Finance and the Securities Commission on Takeover Bid should be further clarified in order to provide firm and stabile legal framework enabling structuring of future transactions on Serbian market.

# COMPETITION LAW

## CURRENT SITUATION

### Overview

The new Competition Law has been enacted by the Serbian Parliament in July 2009. It will be applicable from November 1st 2009. Similarly to the Law on Protection of Competition from 2005, it constitutes the basic legal framework for the area of competition in Serbia.

Overall, the enforcement tools of the Serbian Commission for Protection of Competition (hereinafter: the Commission) are enhanced, with the introduction in Serbian competition legislation, of the power of the Commission to impose fines as well as to conduct fully fledged dawn raids. As regards merger control, the notification thresholds have been revised and the procedure improved. From a material law perspective, the new Competition Law basically does not bring about major changes.

### New procedural rules when investigating Competition Law infringements

One main novelty is that proceedings for investigating competition legislation infringements may be initiated only *ex officio,* when the Commission reasonably assumes the existence of the breach. Thus, the decision to initiate proceedings will be in the sole discretion of the Commission's Chairperson. Third parties will no longer be entitled to formally request the initiation of proceedings and will not be considered as parties to the proceedings, as it was the case with the previous Law. The new legislation establishes for the first time a leniency program, where transparent rules should grant immunity from, or reduction of, fines for whistleblowers in cartel cases. However, appropriate leniency guidelines are yet to be enacted by the Serbian Government.

As of November 1st 2009, the Commission will be empowered to conduct on-site investigation of premises, vehicles, land and other sites at which undertakings or third parties are engaged in their business, without the necessity to obtain a prior court decision. Unannounced investigations are to be performed in case of the risk of removal or change of evidence. In addition, if an undertaking unjustifiably opposes to the Commission's entry, forced entry with police assistance and without court order will be possible. When conducting on-site investigations, the Commission has the right to seal premises and books or records, to ask questions, etc.

For the first time in Serbian legislation, a right to privileged communication between the parties and their legal counsels is provided in the new Competition Law. However, it is unclear if it relates only to the attorney at law (external counsel) or also to in-house counsels. Statement of Objections, by which the Commission informs the parties of the preliminary established facts in order to ensure the parties' right to due process, are also newly introduced.

The most significant change is Commission's competence to directly impose fines on undertakings after having decided on the existence of a violation. Pursuant to the legislation from 2005, a breach of competition legislation represented a misdemeanor, in which case the Commission was authorized only to file a request for initiation of misdemeanor proceedings before the relevant court. Moreover, the power to impose certain new procedural penalties has been given to the Commission. Concerning the measures aiming to remedy the competition infringement, besides behavioral remedies that might be imposed in line with the legislation from 2005, the Commission will be entitled to order de-mergers and other structural measures.

### Merger control

The new Competition Law brings a significant increase of the turnover thresholds decisive for the obligation to notify a concentration in Serbia. Instead of the current thresholds of 50 million EUR of combined worldwide turnover or 10 million EUR of combined Serbian turnover, when undertakings participating in the concentration are registered in the Republic of Serbia, the following new turnover thresholds (always in relation to turnover achieved in the preceding business year) will be introduced:

- worldwide turnover of all undertakings concerned exceeds 100 million EUR of total worldwide turnover, and Serbian turnover of at least one of the undertakings concerned exceeds 10 million EUR or
- Serbian turnover of at least two undertakings concerned exceeds EUR 20 million, under the presumption that minimum two undertakings concerned have

Serbian turnover exceeds EUR 1 million within the same time period.

The deadline to notify a concentration has been extended from 7 to 15 days. A takeover bid can be implemented before clearance is given, provided that specific conditions are met. The concentration is deemed to be approved if, within 30 days after filing, the Commission neither approves the concentration nor expressly decides to proceed with an investigation procedure. In addition, pursuant to the new Competition Law, in cases of problematic concentrations, the parties will have the right to propose commitments/merger remedies. Finally, if the concentration has been implemented before clearance is given or imposed merger remedies have been violated, the Commission will be explicitly entitled to order a de-merger.

### Other relevant changes

From a material law perspective, the new Competition Law basically does not bring about major changes (e.g. in relation to restrictive agreements and abuse of a dominant position). However, it introduces *de minimis* rule when assessing restrictive agreements and puts in place a new definition of dominance and collective dominance. The new Competition Law further contains special provisions concerning compensation for damages when an individual has suffered damages due to competition legislation violations, and consequently, to a certain extent, introduces private enforcement in Serbia.

## POSITIVE DEVELOPMENTS

Generally, by enacting new competition rules, Serbia has made considerable efforts to align its competition legislation with the body of EU legislation. Broader competence of the Commission, combined with increased merger notification thresholds should bring more efficiency in competition protection.

## REMAINING ISSUES

The Commission does not have a good track record in terms of more complicated cases. Based on public knowledge, whenever its decision was challenged before the Supreme Court of Serbia, the court decided to take the claimant's view and annul the Commission's decision.

In all fairness, grounds for annulment have mostly been of formal nature. However, since the new law bestows a great deal of new powers for the Commission, market participants may face a whole new era of uncertainty. Most obviously, the Commission would be able to penalize market participants directly (up to 10% of global turnover), collect fines in a swift tax collection procedure and leave companies bankrupt, all on the basis of a potentially flawed decision (based on its previous track record with the Supreme Court).

Finally, the much needed legal certainty in the area of restrictive agreements will not have been met without block exemption regulations and other relevant interpretative guidelines.

## FIC RECOMMENDATIONS

- When implementing its new powers, the Commission should take into account constitutional provisions, particularly the one related to the protection of the right on privacy and right to defence;
- Immediate enactment of Block Exemption Regulations is a prerogative for ensuring compliance with EU regulations – certain industries (automotive in particular) have been affected by the lacking of automatic exemptions for their distribution agreements;
- Timely enactment of appropriate leniency guidelines shall procure more efficiency when determining the existence of the cartel by the Commission;

- The Commission should apply European guidelines in assessing competition issues to avoid inconsistencies in its application;
- The Commission should make its practice consistent towards all undertakings, in order to remedy the current situation which leaves high legal uncertainty for undertakings;
- The regulation on tariffs before the Commission has to be decreased to a reasonable level appropriate for comparable jurisdictions (Croatia, Slovenia, Bosnia and Herzegovina, and Montenegro, etc).

# STATE AID LAW

## CURRENT SITUATION

July 2009, the Parliament enacted the first piece of legislation regulating state aid which will take effect as of 1 January 2010. The law emerges from the provisions of articles 85 and 86 of the Treaty establishing the European Communities (the Rome Treaty). In a nutshell, it is aimed at applying competition rules to state aid granted by state to market participants, with the aim of preventing distortion of competition.

## POSITIVE DEVELOPMENTS

The adoption of the law is a positive development in itself. Namely, one of the prerequisites for the continuation of the European integration process is the establishment of free market, able to sustain competitive pressures which will start with the liberalization of trade with EU member states. State subsidies and other forms of state aid, will now face scrutiny by the authority designed to ensure the level-playing field among beneficiaries of state aid and their competitors. The new law is designed to put an end to practice which has become traditional in Serbia over the past 60 years – helping insolvent companies survive, paying no regard to how efficient and viable they are.

## REMAINING ISSUES

- Appointment, as soon as possible, of the members of the new State Aid Commission.
- The development of sound practice by the new State Aid Commission in accordance with EU standards and established practice of the European Commission.
- Due to the introduction of a new state authority, it may be necessary to regulate the possible conflict of jurisdictions between the Competition Commission and the new State Aid Commission in respect of enforcement of general competition law.
- Adoption, as soon as possible, of the necessary secondary legislation by the Government of Serbia in order for the State Aid Commission to commence effective enforcement of the law.
- Amending the law as to ensure the status of the Commission as an independent agency, instead of a governmental body, formed and funded directly by the Government of Serbia. Thus, ensuring that the future performance of the Commission is not under the shadow of lacking of independence in decision-making.

## FIC RECOMMENDATIONS

- Establishing the authority for the control of state aid with full capacity and authority, to enable consistent and unbiased enforcement of the law.
- More efficient and prompt harmonization with EU standards and regulations in the field of State aid control, especially in respect of the independence of the State aid control Commission and the potential conflict of jurisdictions with the Competition Commission.
- Establishing ongoing communication with the European Commission in order to most effectively adopt and implement the EC's established practice in the field of State aid control.
- Facilitate the organization of trainings and education seminars for members and technical staff of the Commission that are to be held by the European Commission.

# CONSUMER PROTECTION

## CURRENT SITUATION

Development of consumer protection in Serbia is in the initial stage, both in legislative and institutional sense.

The field of consumer protection is regulated by the Law on Consumer Protection dated from 2005, as the core law, as well as other specific laws such as Law on Contracts and Torts, Law on Protection of Competition, Law on Advertising, Law on Prices, Law on General Product Safety, Law on Genetically Modified Organisms, Law on Broadcasting and Law on Banks etc. Legal framework in the field of consumer protection is not fully developed and harmonized with EU legislation. Generally, the law is not precise, not regularly structured, not consumer oriented and does not represent a functional legal frame. Its provisions are scarce, rather declarative than applicable.

As for implementation of the Law on Consumers Protection and other related laws, and establishment of the institutions, the consumers' protection is still poor.

Consumer is defined as a natural person, commercial company, enterprise, other legal entity and entrepreneur, when they are purchasing the products or obtaining services for their own needs. Inclusion of the legal entity is different from the provisions of EU instructions and practice of the European Court of Justice, subject to which the consumer is only a natural person and the company composed of natural persons. Besides the consumers and the salesman, it does not define other legal concepts in terms of this Law.

Protection of life, health and safety of the consumers is covered only basically and briefly. Safety of the products and packing material is only partially in compliance with the EU rules and the Law on Packing Material. The lacking provisions are those specifying that the packing material shall not affect the quality and safety of the products, that the packing material shall not create the consumers' confusion in connection with the size and weight of the products, that the salesman is obliged to, upon the consumer's request, keep the packing material, that packing bags with the seller's/manufacturer's logo shall not be charged.

The said law contains the disputable provisions on the permitted trade with genetically modified products, prohibited by the provisions of the Law on Genetically Modified Organisms enacted in 2009. Further compliance with the EU Instructions 90/219/EEC and the Law on Genetically Modified Organisms is required.

The basic principles of the prices and the guarantee are in compliance with EU Instructions 98/7/EC and 1999/44/EC. Further compliance is required. Distance financial services and related consumers' protection have not been regulated by the Law. Distance purchase is only partially complied with the Instructions on the contracts negotiated away from business premises 85/577/EEC and Directive regulating distance contracting EU 97/7/EC. Provisions governing consumers' credits are only partially complied with the EU Instructions 90/7/EC. Principal concept, agreement termination, exceptions, information to the consumers, announcement of granting of the loan, settlement prior to expiry of the term, changes on the side of the loan grantor and legal right of pledge are not regulated by the Law.

Special forms of consumers' protection in connection with services are partially compliant with EU Instructions. The said law does not provide for mandatory application of the provisions of the Law on Consumers Protection. Public services are defined only in general. Obligation of the competent authorities to ensure the conditions for market competition between public services, inclusion of the representatives of the consumers' associations in the competent authorities in charge with claims of the public services providers is not stipulated. Provisions related to the standard agreements are not completely in line with the EU rules. The Law governs only interpretation of the unclear provisions of standard agreements and prohibition of issuance of the misleading guarantees. It does not govern unfair contractual commitments and provisions of the agreements, circumstances requiring assessment prohibition of application, entitlement to initiation of protection procedure, exceptions to the application, unfair business practice, misleading actions and omissions, procedures of misleading business practice, aggressive business practice, harassment, acts of force and non-permissive impact. Provisions on announcing are partially in compliance with EU Instructions 84/450/EEC. Comparative announcing is not governed.

The rules on providing evidence for the damage are not complied with EU Instructions 85/374/EEC on liability for

the products. There is a serious mistake in joining together the provisions on damage compensation. Provisions on liability of the seller lacks–operator of the means of distance communication, as well as the provisions on the seller's obligation to, upon request, provide evidence supporting his business practice and the provisions governing the competent authority's free assessment of the circumstances underlying the case.

Definition of the arbitration authorities' competence is missing. Mechanisms of the consumers' legal remedies within the extrajudicial settlement of the disputes are not mentioned. The concept of the consumers' organization is not precisely defined, nor the registration criteria. There are ambiguities in terms of unique representative association. The disputable issue is prohibited financing of the consumers' organization by EU institutions.

## POSITIVE DEVELOPMENTS

Passage of related laws complied with the EU Instructions, which partially govern consumers' protection, thus ensuring a better protection until a new Law on Consumers Protection is passed.

## REMAINING ISSUES

Under the circumstances of transition, import liberalization, incompliance of local regulations governing the quality of the products with the EU standards and poor purchase ability of the citizens, the market is flooded by poor quality products which represent a risk for health and safety of the consumers. Under the circumstances of market competition, introduction of new technologies and types of sale, including the distance trade, the grounds for consumers' protection have not yet been created. In case of the standard agreements, formulated in advance, without any participation of the consumers, the consumers are not in the position to assess which of the requirements may be unfair. In the field of public services, although the legal grounds have been created, no material improvement of the consumers' interests' protection has occurred yet.

Financial services offered to the consumers (banking services, loans, and insurance, pension, savings and payment services) represent a problem for the consumer from the aspect of information and protection. Especially, since these services are offered in the form of standard agreements with the conditions formulated in advance, which conditions are unfavorable for the consumers' interests (costs of the services, annual interest rate, conditions upon termination of the agreement, etc.).

The information to the consumers is mainly based on issuance of leaflets and fliers. There are no special consumers' magazines, which would provide explanation of the data and independent comparative research.

Extrajudicial protection in the practice is either administrative inspection or court inspection for damage compensation. In practice, the lawsuit calls for high costs. The alternative protection provided by the Consumers Protection Act is arbitration, but it still lacks the well functioning mechanisms for application.

The authority in charge with the consumers' protection system, within the Ministry of Trade and Services, is the Consumers Protection Department. However, it has not achieved the required functional and operative level of acting. The problems include the required offices, equipment, professional education, appropriate library, professional books and magazines. The level of communication and cooperation with other institutions in the country and abroad is not satisfactory.

Inspection supervision lacks satisfactory coordination, exchange of information and documents between the inspection authorities and the Ministries in charge, between the inspection authorities and customs authorities. The communication system is outdated. There is no unique information system used by all the parties concerned. There is no fast warning system ensuring exchange of information, unique system of fast warning in case of appearance of hazardous consumption products. There is no coordination between various Ministries, inspection authorities, standardization authorities, chambers of commerce and associations.

There are a large number of consumers' organizations, but due to the lack of joint actions, their influence is small, only

within the local self-management units. This is the result of the lack of funds allocated for that purpose, first of all from the budget, as well as irrational use of the existing funds. A special problem is existence of unclear issues in terms of identification of the unique national representative association of the consumers of the Republic of Serbia, which would have full legitimacy to join the international organizations and appear as the negotiator in access to the foreign special purpose funds.

There are no advisory centers, as the nucleus of the social mechanism of consumers' protection (which integrate and coordinate operations of the governmental and independent consumers' organizations), which exist in all other European countries, and financing of such centers is directly dependant on the financial standing of the country, schedule for obtaining financial and professional assistance from the international sources and the extent of interest of the local self-management units.

## FIC RECOMMENDATIONS

- Urgent compliance of the Law with EU standards and rendered regulations;
- Adoption of new legal regulations for the purpose of completion of the protection programs in the fields not governed so far, or not sufficiently governed;
- Establishment of a system of extrajudicial settlement of the disputes;
- Further compliance of the legal regulations in terms of safety of foodstuffs and safety of the products with the international EU standards covering certain fields.

# GENERAL SAFETY OF GOODS

## CURRENT SITUATION

In late spring of 2009, Serbian Lawmakers have passed the new Law on General Safety of Goods. However, the commencement of its application has been postponed for mid-December 2009. The law systematically regulates for the first time ever the duties and obligations of manufacturers and distributors in relation to safety of goods. In essence, the law is an adoption of relevant EU legislation and standards.

## POSITIVE DEVELOPMENTS

The enacting of the law is a positive development in its own. Its adoption is one of the conditions ranking highest on the list for further EU accession of the country. The law introduces EU standards and rules regulating free trade of goods on the market. It is drafted up in the image of its older European counterparts. It regulates the future relationship between Serbia and the EU, by introducing, for example, provisions regarding RAPEX, the EU rapid alert system for all dangerous consumer products. Furthermore, it stipulates significant duties of manufacturers and disturbers, alike, relating to safety of goods, providing information, supervisory control of state authorities, customs issues and public disclosure of information. Breach of its major provisions is sanctioned with pecuniary fines.

Interestingly, in accordance with further EU integration, the new law provides for the enforcement of decisions issued by the European Commission.

## REMAINING ISSUES

It remains to be seen how will the provisions of the new law be applied and enforced in the future. Furthermore, positive enforcement of the law highly depends on the pace in which relevant state authorities will get familiar with this new legal framework and the accompanying standards.

Regarding enforcement, it is especially important that a good practice is established, particularly in relation to rapid warning of endangered consumers, public disclosure, and issuance of measures and pecuniary fines against proven offenders.

Finally, the full scope of the law will come into effect only upon full accession of Serbia into the EU.

## FIC RECOMMENDATIONS

- Enactment, as soon as possible, of the secondary legislation necessary for the law to become fully operational;
- Training and preparation of state enforcers in cooperation with the EU for the application of the law in order to secure effective results;
- Speeding up the process of harmonization of Serbian standards with those of the EU;
- Timely performance of duties under prescribed deadlines by the Serbian Government;
- Campaigning in order to raise the level of general public awareness in respect if consumer rights under the new law.

# E-COMMERCE REGULATIONS AND DIGITAL SIGNATURE

## CURRENT SITUATION

In May 2009, the Parliament enacted two significant pieces of legislation regulating e-commerce: the Law on E-Commerce and the Electronic Document Law. Therefore, the process of regulating e-commerce, started in 2004, by the adoption of the Electronic Signature Law, has finally been concluded. All of the said acts are pioneering projects setting up the first ever legal framework for doing e-commerce in Serbia.

## POSITIVE DEVELOPMENTS

Adoption of these laws is a major development in its own right. Namely, this is the first time that electronic contracting has been given legal validity in Serbian jurisdiction. The same goes for all other electronic documents. Previously, all of the said documents had little or no legal effect in Serbia, particularly before a court of law.

Furthermore, the new laws introduce some of the best practice and solutions developed by UNCITRAL and other notable legal institutions and jurisdictions. This is especially true in regards of the rules for electronic contracting; sending and receiving of an offer to contract and the respective response; the moment of contracting; spam liability etc.

Therefore, now it is legally possible, in Serbia, to shop online, sign an e-contract, issue an e-invoice and execute most business transactions electronically. In this regard, e-commerce regulation has been fully encompassed.

## REMAINING ISSUES

For e-commerce to really come to life, it is essential that the newly envisaged rules are fully applied and enforced. In this respect, we await with anticipation the first court rulings regarding the legal validity of e-documents, e-contracts and all plausible accompanying issues deriving from these relationships.

On the other hand, Serbia still lacks the necessary infrastructure for effective e-commerce processing and trade margins are still significantly higher in comparison to those in the region or the EU. Only by further liberalisation and progress of the e-commerce market, further developments might be expected.

## FIC RECOMMENDATIONS

- Adoption, as soon as possible, of the envisaged secondary legislation that is required for full implementation of the new laws;
- Organizing in-depth trainings of relevant state authorities and the judiciary in order to secure proper enforcement;
- Organizing public campaigns, endorsed by the Government, targeted at general public awareness of e-commerce legislation and promoting legal security and public trust;
- Full liberalisation of the e-commerce market, and promotion of the new laws inside the business community;
- Encouraging the increase in number of processing centres in Serbia.

# FOREIGN TRADE

## CURRENT SITUATION

The new Foreign Trade Law has been enacted by the Serbian Parliament in May 2009, replacing the law from the year 2005 and providing for the basic legal framework for the foreign trade. Adoption of this law contributes to further harmonization of Serbian rules with the WTO and EU standards. Therefore, any measures are to be applicable and interpreted in line with WTO and EU practice and standards.

There are no major substantial changes. Foreign trade still could be restricted only under the law, business entities enjoy same rights in foreign as in domestic trade, possibility of automatic issuance of the permits for the import, export or transit of the goods has been introduced and terminology has been adjusted to the said international standards. Although certain by-laws for its implementation are already adopted, there are several important issues which should be dealt by new by-laws that are not rendered yet.

The new Act governs:

- entities in foreign trade;
- principles of foreign trade;
- measures that affect foreign trade;
- foreign trade of goods;
- foreign trade of services;
- safety measures;
- other regimes and measures;
- Serbia Investment and Export Promotion Agency.

The application of the Act to foreign trade of arms, military equipment and dual purpose goods has been explicitly excluded.

The significant difference between previous law and the new law lies in the fact that the new act does not stipulate conditions for issuing, utilization and revokal of permits, nor does it stipulate the procedure and terms for application of antidumping and compensatory measures. The majority of these issues are left for regulation in by-laws. Most of them have not been enacted and the law does not envisage a deadline for enacting them. Having in mind that by-laws under previous law will be applied until the enactment of new ones, this may cause problems in implementation of the new law.

Another important difference is absence of previously mandatory registration of the direct investments of local entities abroad. Serbian individuals and companies were subject to such obligation in cases of direct investments, changes of company's status affecting shareholding, the date of cessation of business of a company, branch or representative office abroad. Instead of registration, domestic persons have obligation only to notify the competent ministry in case of direct investment and changes of company's status affecting shareholding.

Under previous regulation already established Serbian Investment and Export Promotion Agency had been provided with the more appropriate legal framework, whereby its competence has been regulated in specific manner.

## POSITIVE DEVELOPMENTS

The new definition of quantitative restrictions is certainly a positive step, as they now do not presume the prohibition of import or export but merely the limiting of the largest total volume of a certain goods that may be exported or imported within a specified period of time.

The legislator has left the conditions for the issuing, utilization and revokal of permits and the terms for the application of antidumping and compensatory measures to be governed by by-laws. In general this could be deemed positive since it provides for sufficient flexibility with regard to subsequent amendments and supplements to those conditions and procedures which can be later, in the implementation of the law and the by-laws, found to require amendments and supplements. On the other hand, leaving such particularly sensitive issues to be governed by by-laws might enable frequent amendments, and also poses the question of quality of the said solutions in future by-laws. As these by-laws have not yet been enacted, it is impossible to give a definite evaluation at this time.

What certainly is a positive step is the removal of the obligation of local natural and legal entities to register their direct investments abroad at the competent Ministry.

## REMAINING ISSUES

Considering the scope of the act and the fact that the most important provisions regarding foreign trade will be governed by by-laws, the law itself does not leave any material issues open. Therefore, the full impact of the new law on foreign trade is to be ascertained upon enactment respective by-laws.

Concerning the above, the fact that the new law does not stipulate a deadline for enacting the appropriate by-laws constitutes a problem which the competent ministries and the Government of the Republic of Serbia should face as soon as possible.

## FIC RECOMMENDATIONS

- New by-laws, such are by-law which will regulate the conditions for application of antidumping measures, for application of compensatory duties, for application of measures for protection from excessive imports as well as by-law which will prescribe the conditions for payment in goods and services and for export and import without payment, which need to be enacted as soon as possible, should be in accordance with the rules of the WTO and regulations of the EU as well and should govern all issues of significance to the legal institution they refer to, not regulated by the act itself.

# CUSTOMS

## CURRENT SITUATION

Customs Law ("Official Gazette of the RS", no. 73/2003, 61/2005, 85/2005, 62/2006 and 63/2006) and Law on Customs Tariff ("Official Gazette of the RS" No. 62/2005, 61/2007 and 5/2009) represent the legal framework for the regulation of the customs procedures, based on the application of the principles of free trade and efficient customs control.

### Customs Law

The existing law incorporated the most important institutes of the EU Community Customs Code. The new Customs Law, which entails further harmonization with the EU regulations and which is partially adjusted to the new solutions envisaged by the new Modernised EU Customs Code, is in the adoption procedure in Serbian Parliament since March 2009. The most important novelty introduced by this Law is the institute of "authorized economic entity", which should represent a step forward in simplification and reduction of customs procedures for companies having this status. However, detailed procedure on how to obtain such status and on the level of simplification of specific procedures is yet to be prescribed by the relevant by-law after the Law has been adopted.

### Customs Tariff

The rationale behind adoption of the Law on Amendments of the Law on Customs Tariff ("Official Gazette of the RS", No. 5/2009), beside significant reduction of duty rates for importation of passenger cars and all types of phones, was to enable "unilateral" application of the Interim Agreement on Trade and Trade Related Matters signed with the EU. This Law on Amendments of the Law on Customs Tariff also reaffirmed the principle of supremacy of the ratified Free Trade Agreements (FTA) over local customs tariff legislative regarding customs duty rates which are prescribed by these FTA and applicable for goods originating in the FTA contracting parties.

Related to this change, the power was granted to the Government of the Republic of Serbia to include, via Decree, all changes in customs duty rates encompassed by the respective FTA's when harmonizing the nomenclature of the customs tariff with the EU Combined Nomenclature. Consequently, yearly adjustment of the nomenclature is being carried out in compliance with the obligations transpiring from FTA.

By the last Decree on Harmonization of the Customs Tariff Nomenclature for 2009 ("Official Gazette of RS", No.33/2009), that has been applied as of May 7th 2009, the national customs tariff was harmonized with the EU Combined Nomenclature for 2009. This Decree also included all duty rates applicable for 2009 on the basis of the FTA ratified by Serbia. This provided companies with a transparent piece of legislation, showing all relevant Serbian customs duty rates within a single document.

The national customs tariff was already harmonized with the Harmonized Commodity Description and Coding System-HS 2007, which the World Customs Organization adopted in 2004, with applicability since January 1st 2007.

## POSITIVE DEVELOPMENTS

The improvements are related primarily to the possibility for application of simplified customs procedures. As of March 09, Serbian customs administration started with trial application period for simplification of all customs approved procedures. Until the end of July 2009, first authorizations for simplified import procedures were granted.

Also, as of June 2009, customs administration started to grant the status of "authorized exporter", relevant for application of simplified export procedures with the Serbian originating goods subject to application of preferential origin rules.

Percentage of customs declarations submitted by e-mail is constantly increasing. Out of the total number of accepted declarations for all customs procedures, 81% was submitted by e-mail in 2008, and 87% in the first six months of 2009.

In accordance with the National Strategy for Integrated Border Management, adopted in 2006 with the aim of establishing best possible coordination with all services at border crossing points, only 4 services remained at the border crossings: border police, customs administration service, veterinary and phytosanitary inspection. Meetings of the representatives of border services at border crossings are held on regular basis and exchange of data with relevant ministries

is established, as well as cooperation with the relevant international institutions.

## REMAINING ISSUES

Problems in the customs system are by and large still related to the practical implementation of customs procedures and, to much less extent, to the solutions given in the existent regulations. Problems related to customs procedures are:

- Customs procedures are still slow and different in practice from one customs office to another;
- Hefty paperwork requirements for export/import, especially in relation to application of FTA;
- Lengthy procedure linked with inspection services;
- Lengthy customs administrative procedures;
- Discordant work of customs and inspections bodies;
- Insufficient technical facilities at border crossings;
- Insufficient administrative capacity.

In addition, although not strictly related to customs legislation, one of the key remaining issues in the legislative framework relates to applicability of international certificates in the customs clearance procedures. Customs procedures may be simplified if various certificates which relate to imported goods that are issued by the recognized international institution or those issued in EU countries would be accepted and applicable also for customs purposes in Serbia, i.e. that no re-certification is required. By way of example, this could relate to conformity certificates for electrical appliances and apparatus that are imported etc. Another example may be health and sanitary certificates.

It seems inappropriate to regard as qualified only those technical certificates which are issued by Serbian authorized institutions. Furthermore, obtaining local certificates is costly and time-consuming, whereby unnecessary complicating and prolonging customs procedure.

## FIC RECOMMENDATIONS

- Further harmonization with EU regulations and WTO rules;
- Adoption of the new Customs Law;
- Development of the detailed procedure for granting the status of the "authorized economic entity" and for application of relevant simplifications;
- Special emphasis on adoption of relevant by-laws, primarily of the Decree for the implementation of the new Customs Law, in order to enable adequate implementation of all institutes provided by the Law
- Adoption of respective by-laws relevant for the endorsement of certificates issued by recognized international institution or those issued in EU countries by Serbian authorities;
- Provide the administrative capacity for the implementation of the new regulations;
- Accelerate the implementation of Integrated Border Management with the aim of more effective control of the work of all services and their cooperation with other state bodies and international entities;
- Accelerate the implementation of the Single E-window project;

- Further development of risk management procedures and further reduction of the percentage of selective goods examination based on the risk assessment;
- Ensure that appeal in relevant customs procedures delays execution of decision;
- Accept FIC recommendations for change and amendments to the new Customs Law
- Coordinate and improve practice in decision making regarding process of determination of customs value.

# INTEGRATED BORDER MANAGEMENT

## CURRENT SITUATION

Activities for the establishment of an Integrated Border Management have been set out in terms of strategy by the Integrated Border Management Strategy adopted in January 2006 and determined in terms of operation by the Implementation Action Plan adopted in June 2006. Regrettably, due to slack legislative activities of both the Government and the National Parliament in the past period, the implementation of the activities from this Action Plan is in delay in average from one to one-and-half years.

The implementation of the Strategy has been supported by the European Commission through a so-called twinning project financed from CARDS 2005 programme and it will be implemented by the partners from Austria and Hungary. Realisation of the project will commence in September this year and the competent bodies expect that once the realisation of the project is started it will result in significant acceleration of the implementation of the Strategy.

## POSITIVE DEVELOPMENTS

Key determinant of the Strategy implementation is the coordination of various services at the border and a significant improvement to that respect is the Agreement on Cooperation in the Area of Integrated Border Management signed in February this year between the Ministry of Internal Affairs (Border Police), Ministry of Finances (Customs), Ministry of Agriculture, Forestry and Water Economy (Veterinary and Phyto-Sanitary Inspection) and Ministry for Infrastructure (Port Authorities). The Agreement provides for the harmonisation of operation and coordination of activities within the area of border control and this on all three levels: central, regional and local levels. Working meetings of the Services will be held quarterly on the central and regional levels and once a month on the local level. Other areas covered by the Agreement are: exchange of information, mutual and professional assistance, joint activities (joint procedure regarding risk analysis, *ad-hoc* task teams for solving individual issues, joint use of equipment, development, training, etc.), acting in extraordinary situations and international cooperation.

Strategy Implementation Steering Committee was also established by the Decision of the Government of the Republic of Serbia in May 2009 composed of the Ministers of the above mentioned four Ministries (MIA – managing executive, MAFWE, MF, MI). The task of the Steering Committee is to monitor, direct and coordinate activities related with the implementation of the Strategy. The first meeting was held in June 2009.

Procedure for joint risk assessment by the border services on local and regional levels was also prepared.

One of the objectives of the Strategy is the reduction of the number of inspections and services at the border to four: Border Police (BP), Customs Administration (CA), Veterinary Inspection (VI) and Phyto-Sanitary Inspection (PSI). The following has been done to that respect:

On July 17th 2006, preliminary control of radioactivity level by authorised customs officers started on border crossings

(taken over from the Ministry of Environmental Protection and Spatial Planning).

On April 1st 2008, the CA took over documentary and preventive control of the traffic of waste, poisonous matters and ozone layer damaging substances (taken over from the Ministry of Environmental Protection and Spatial Planning).

On January 1st 2008, control of the traffic of protected flora and fauna species was taken over by the VI and PSI (taken over from the Ministry of Environmental Protection and Spatial Planning).

In August 2008, the Risk Management Strategy of the Customs Administration of the Republic of Serbia was enacted, thus developing further the system of risk management and selective control and the implementation thereof is priority for CA RS. Since January 1, 2008, a supplemented message system is being implemented which more precisely defines the selective control.

Within the frame of international cooperation, protocols on holding regular meetings on all levels of BP officials were signed in the past two years with Macedonia, Montenegro (2008) and B&H (2009) and they are all being applied. Rail Traffic Border Control Agreement was signed with Montenegro (March 9th 2009) which provides for joint operation in joint railway station in Bijelo Polje and control of a train moving between Bijelo polje and Prijepolje by both Customs and Border Police.

Memorandums of Understanding aiming acceleration of the flow of goods, combat against custom frauds and protection of intellectual property have been signed between CA and transportation companies, exporters and other business entities.

Very significant improvements have been made in the area of upgrading the customs procedure through introducing option for electronic submission of documents, modernisation and reconstruction of border crossings and achievement of better coordination of all border services:

- Introduced electronic submission of documents is accepted by increasingly more companies;
- In 2009 (for the first five months), from the total number of submitted declarations 85% thereof were submitted electronically;
- The last of four large border crossing – Presevo has also been reconstructed as well as 9 secondary crossings;
- Traffic lights have been installed at customs outposts thus giving the procedure insight into the stage in which each document is;
- As from March 1st, simplified procedure for documents submission has been introduced.
- Number of companies which obtained a status of authorised exporters has increased.
- Bank guarantees and quotas stipulated within the Agreement with EU and CEFTA 2006 are checked by way of SMS messages;
- The system of subsequent control gave goods results;
- Since January 1st 2009 for goods in transit through Serbia it is required to submit only transit declaration;
- Pursuant to the determined Integrated Border Management Strategy contact persons in different administrations have been appointed for the purpose of better informing and cooperation with other services both in the country and abroad;
- Cooperation with customs administrations of other countries has been intensified. The process of establishing electronic data exchange is under way.

## REMAINING ISSUES

In connection with one of the key issues – the issue of infrastructure on the border, a system problem is still present which is the inexistence of a border crossings management body which would have its own financing sources and which could finance development and reconstruction of lesser developed border crossings from the funds collected in better developed and more busy ones (e.g. Horgos, Gradina). There is an indication that the Government of RS could soon pass a Decree on establishing of such a body considering that although this has been anticipated by neither the Strategy nor the Action Plan it is the practice that pointed to the priority in having the said issue solved.

In view of the issue of (non)existence of customs terminals on border crossings which doubles the time of administration in the flow of goods, there are terminals on all larger border crossings, particularly on Corridor 10, however, it is required that they are also arranged on the crossings to Bosnia and

Herzegovina and Montenegro. Taking into account the versatility of routes, it is necessary to provide several (2-4) equipped crossings on the border with B&H and at least one with Montenegro (*it should also be noted that crossings with MNE are not official state border crossings but merely checkpoints because this matter has not been regulated by a specific agreement with Montenegro*). Separate problem is the fact that it is not uncommon that terminals are privately owned and the rates they charge high although customs authorities are recently working on solving this problem.

Problems often occur due to discrepancy of operation of the services on the borders which primarily results from the lack of routine and inferior application of set out procedures. Additional problem is insufficient number of CA staff on border crossings which has been also remarked by carriers.

As for the integral border crossing, namely *one-stop-control* crossing which means only one (joint) control by two parties, although agreement on establishing of such a border crossing was signed with Hungary even in 1998, there are still no possibilities for establishing thereof with any of the neighbours. Mutual recognition of customs documents has been identified as the biggest issue. That issue could be actualised within the framework of Serbia's chairing the CEFTA bodies (for crossings to CEFTA neighbours) and the framework of a Committee for Implementation of Transitional Agreement once it is established (for EU neighbours). In this respect, available Austrian-Hungarian experience in the twinning project should be used also considering that the crossing on Budapest-Vienna motorway was one of the largest such crossings in Europe.

### FIC RECOMMENDATIONS

- To provide better coordination of all services on the border and strictly keep to set out procedures subject to ensuring their transparency;
- To establish a body for border crossings management which body would have its own sources of financing;
- To provide for terminal related issues to be solved;
- To intensify and upgrade CA manpower on border crossings.

# BARRIERS NOT RELATED WITH CUSTOMS

## CURRENT SITUATION

Although as per CEFTA Agreement 2006 the trade in the region has been completely liberalised, barriers not related with customs represent obstacle to full liberalisation of trade and impede the creation of a free trading zone anticipated by this Agreement by the end of 2010.

The most common barriers are the following:

- complicated procedures at border crossings;
- different level of harmonisation of technical standards and technical regulations with international standards (EU standards) within the CEFTA member countries;
- non-existence of an agreement on mutual recognition of accreditation and certifying authorities within member countries parties to the CEFTA Agreement;
- non-existence of an agreement on compliance and acceptance of industrial products within the CEFTA Agreement which also includes compliance evaluation procedures and quality infrastructure;
- issue covering recognition of quality certificates;
- disharmony of local standards and technical regulations with international standards;

- lack of adequate traffic and other infrastructure ;
- complicated visa regime;
- corruption and smuggling.

Problem posed by not custom-related barriers is particularly expressed in the trade with Bosnia and Herzegovina and Macedonia. B&H passed the Law on Protection of Domestic Production on June 18th 2009 imposing full custom duties on import of agricultural products from Serbia and Croatia which restricts agreed free trade between these countries. The said Law breached the CEFTA Agreement the objective of which Agreement is to develop a free trade and not serve as a vehicle for imposing measures of protectionism. Pursuant to the Law, full custom duties are imposed for over 900 agricultural products, even on some products which B&H does not import at all.

As the CEFTA Agreement has been breached by this Law, at the beginning of July 2009, the Constitutional Court of B&H temporarily stayed its application. The said measure will remain in force until final judgement is passed.

Macedonian Government has passed Decision wherewith taxes are increased on the import of foodstuffs. This measure has been introduced without prior publication in the Official Gazette of Macedonia. All taxes have been increased and even some new introduced so that costs for product analysis instead of EUR 30 amount to EUR 500; administrative tax amounts to EUR 10; Macedonian translation of certificate is required as well as that it is not older than 7 days. It is required that each product has declaration in Macedonian language.

## IMPROVEMENTS

The following regulations have been enacted in 2009:

- Law on Standardisation ("Official Gazette of the RS" No.36/09);
- Law on General Product Safety ("Official Gazette of the RS" No.36/09)
- Law on Technical Requirements for Products and Evaluation of Compliance ("Official Gazette of the RS" No 36/09)

These regulations represent further continuation of transposition of international and European standards into the system of Serbian standards (it is expected that only in the period of implementation of the Agreement on Stabilisation and Association there will be 80% European standards transposed as the explicit obligation of the Republic of Serbia). Introduction of European standards and regulations in this area will reduce the non-compliance of local standards and technical regulations with international standards which are presently a significant not custom-related barrier.

## FIC RECOMMENDATIONS

- To continue harmonisation of standards and technical regulations;
- To exert influence on signing an agreement on mutual acknowledgement of accreditation and certification bodies;
- To exert influence on signing an agreement on evaluation of compliance and acceptance of industrial products, i.e. bilateral agreements to begin with and, once conditions are attained, a multilateral one which would directly result in mutual recognition of quality certificates;
- To work on upgrading of the quality infrastructure;
- Upgrading of the CEFTA Agreement through introduction of pan-European rules on accumulation of origin as all states the signatories to the Agreement have integration into EU as their strategic objective.

# TECHNICAL REQUIREMENTS

## CURRENT SITUATION

In the process of transposition in the Serbian legal system of the European legal attainment relating to technical regulations aimed at obtaining the safety of industrial products, certain results have been achieved which will be the basis for realisation of free movement of goods, namely elimination of existing and prevention of putting-up new unpermitted technical barriers to the trading in the region and with EU countries.

Enactment of three key laws in the Parliament of the Republic of Serbia in May this year is identified as a progress in this process harmonising therewith the infrastructure of quality (metrology, standardisation, accreditation and conformity assessment) and market surveillance with the EU. This is about the Law on Technical Requirements for Products and Conformity Assessment, Law on Standardisation and Law on General Safety of Products. The first two Laws have incorporated unified European mechanisms for drafting and enactment of Serbian technical regulations into which European directives of the "new" and "old" approach regarding products will be transposed, namely Serbian standards with which the harmonised European standards in connection with such directives will be taken over. These standards shall serve Serbian producers as effective and efficient assumption of conformance to the requirements prescribed for product safety like it is in the EU member countries.

Drafting is under way of a new Law on Metrology which will regulate this element of quality infrastructure in accordance with the European legal attainment and, in particular, with the New Package of Regulations for Free Movement of Goods made by the European Commission in August 2008. This law will resolve the existing conflict of interest and competence in connection with the enactment of metrological regulations, authorisation of metrological laboratories and surveillance of their work.

The Accreditation Body of Serbia (ABS) is preparing itself for the fulfilment of requirements related to accreditation set by European Directive 2008/765/EC which is included in the New European Package of Regulations for Free Movement of Goods. On February 12 this year, the ABS applied to the European Cooperation for Accreditation (EA) for collegial evaluation of ABS for the purpose of signing the MLA with EU member countries.

Market inspection department in the Ministry of Trade through which market surveillance is carried has completed preparations for full and adequate implementation of the new Law on General Product Safety into which the European Directive on General Product Safety 2005/95/EC has been transposed. This Law was passed on June 10 of this year and shall enter into operation on December 10 this year; two by-laws necessary for the implementation of the said Law have been prepared: Rules of Notification of Competent Authority about Dangerous Product or Suspected Serious Risk Imposed by Industrial Product Placed onto Market and the Decree on the Functioning of National System for Quick Notification about Dangerous Product on Serbian Market..

## POSITIVE DEVELOPMENTS

Legal framework has been established for the harmonisation of national quality infrastructure with the rules of standardisation and accreditation valid in the EU and drafting of by-laws for the implementation of adopted regulations is in progress.

Action Plan for drafting technical regulations with requirements for industrial product safety has been adopted and the performance of activities is under way in accordance with the AP aimed at passing the Rules on Machinery Safety, Rules on Electrical Equipment Intended for Use within Certain Voltage Limits and Rules on Electro-Magnetic Compatibility.

Inventory has been completed of existing technical regulations, also including mandatory applicable standards from previous decades. The later are presently being analyses in order to be repealed or parts of their contents integrated into new technical regulations to which European directives for industrial products will be transposed. This activity, as a separate area, is included in the Project of Comprehensive Reform of Regulations.

Rules have been set out for drafting and enactment of technical regulations and establishing a Central Register of Regula-

tions which will be maintained by the Quality Infrastructure Department at the Ministry of Economy and Regional Development. Availability of information about Serbian technical regulations will be provided to stakeholders.

## REMAINING ISSUES

Human resources needed for the transposition of standards represent a special problem. Existing manpower in ISS are inadequate both in number and professional qualifications to carry out the forthcoming huge work of transposing 80% of 19 000 harmonised European standards into Serbian standards which is the requirement for the membership of this state in the EU. The Institute still lacks highly qualified staff and four sector managers whose appointment should be decided by the Government of the RS the decision thereof has been kept waited for about two years now. Announced reduction by 26% of the ISS's budget financed by the Government will make this condition worse.

Response of specialists from industry to the invitation for voluntary work on the preparation of Serbian standards through translation of EN standards is weak and it is also due to lack of budget for having them translated in professional translators associations the Institute is oriented to taking over the harmonised EU standards by translating into Serbian only the cover page and foreword. Such Serbian standards "in English" may pose a problem in implementation in some Serbian companies.

Homologation of vehicle types is still carried out in the ISS although the takeover of this competence by the Ministry of Infrastructure was agreed upon through the Quality Infrastructure Department of the MERD even two years ago.

Harmonisation of accreditation schemes with the European schemes.

Insufficient dedication of relevant ministries to the implementation of activities set out in the Action Plan for Preparation of Technical Regulations.

## FIC RECOMMENDATIONS

- To accelerate work of relevant ministries on the fulfilment of the Action Plan for Preparation of Technical Regulations;
- To increase direct participation of specialists from business companies, namely industry fields in the preparation of Serbian standards identical with harmonised European standards;
- Raising of awareness of the significance of the application of standards for the quickest and least expensive proving of compliance to prescribed technical requirements for safety of products which are placed onto the market;
- To increase the number and upgrade staff qualification structure of the national institution for standardisation;
- Current performance of vehicle homologation in the ISS is not in harmony with the European regulations governing free movement of goods and it should be conformed in accordance with communicated intentions and agreements with the Ministry of Infrastructure;
- New law on metrology is to be enacted for the transposition of European directives for measuring instruments and repacked products, as well as the transposition of the directive on "e" marking of the weight of food products in small packings.

# FOREIGN EXCHANGE OPERATIONS

## CURRENT SITUATION

The Law on Foreign Exchange Operations ("RS Official Gazette", No. 62/2006 of July 19th 2006) came into force on July 26th 2006, and since that day there have been no amendments and supplements thereto.

The Law on Foreign Exchange Operations regulates the following areas:

- current transactions;
- capital transactions;
- payment operations:
- foreign exchange market and RSD exchange rate;
- measures of protection;
- foreign exchange supervision
- foreign exchange inspectorate;

In June 2009, the draft Law Amending the Law on Foreign Exchange Operations was published and interested parties provided their comments and suggestions to the Law proposer and/or the National Bank of Serbia and the Ministry of Finance of the Republic of Serbia.

## POSITIVE DEVELOPMENTS

In accordance with FIC recommendation, published in 2008 WB, the adoption of the "Instruction on Reporting of Transactions Against Purchase of Securities" was initiated. Mentioned Instruction was adopted by National Bank of Serbia in November 2008 and this Instruction closely defines the role of banks as agents of international payment operations and intermediaries in securities trading as well as reporting to the National Bank of Serbia thereon.

## REMAINING ISSUES

The Law on Foreign Exchange Operations, in principle, allows nonresidents to purchase claims based on foreign trade and international credit transactions from residents under the conditions prescribed by the Government. The Government has not yet adopted these by-laws.
The Law on Foreign Exchange Operations provides that residents - legal entities may collect the realized export of goods and services by the realized import of goods and services only under the exceptional circumstances under the terms and conditions prescribed by the Government. Apart from not clearly defining whether these transactions require approval by the competent Ministry, in practice this procedure has proved to be unnecessary if such approval is required. In particular, it refers to multinational corporations that are allowed, according to the foreign legislations, to set-off liabilities between connected parties – residents through their founders, i.e. legal entiteis – nonresidents (for cost-saving purposes, etc.).

The Law on Foreign Exchange Operations stipulates that nonresident, as well as resident – branch of a foreign legal entity, that perform business transaction through a nonresident account shall effect transfer from such an account to abroad, provided that its tax liabilities towards the Republic arising from its business activities have been settled. This provision imposes additional liabilities and costs to nonresident legal entities – investors based on the obligation to present certificats on tax settlement, issued by the tax authorities, whereat the tax on revenues from securities shall be paid by the domestic legal entity that is obliged to calculate and pay all taxes in connection with securitities transactions and revenues arising from securities.

A large number of documents to be submitted by clients to the banks for international payment operations (primarily documents proving the existence of payment obligation and basis) and documentary control of the National Bank of Serbia in this area complicate the operation of banks and clients and impair international payment operations efficiency.

## FIC RECOMMENDATIONS

- Appropriate by-laws should be passed to regulate terms and conditions under which nonresidents may purchase claims based on foreign trade and international credit transactions;
- Approval of the competent ministry should be excluded;
- The obligation of nonresidents – legal entities to present certificats on tax settlement, issued by the tax authorities in case of transfer of funds earned against securities transactions and revenues arising from securities from non-resident accounts to abroad should be excluded in order to reduce costs of investors – nonresidents and to achieve higher efficiency in international funds transfers;
- Control of documents that prove the payemnt liability and basis in international payment operations should be performed with the ordering party, i.e. client of the bank and/or banks should be relieved from the obligation to collect, control and keep such documents. However, banks should still have an option to request in international payment operations the delivery of certain documents required for execution of international payments.

# LAW ON PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

## CURRENT SITUATION

The Law on Prevention of Money Laundering and Financing of Terrorism came into force on March 27th 2009. The regulations adopted on the basis of the previous Law on prevention of money laundering, such as „Rulebook on determination of methodology, duties and activities for performance of tasks in accordance to the Law on prevention of money laundering, shall be applied until adoption of new regulations.

The main goal of Law is improvement of already existing system for detection and prevention of money laundering and financing of terrorism and the harmonization of domestic regulations in this field with internationally recognized principles and standards (at first place, EC Directive 2005/60/EC of European Parliament and Council on prevention of use of financial system for money laundering and financing of terrorism dated 2005).

The Law nominates the „obligatory parties" i.e. the legal entities and entrepreneurs which are obliged to undertake the actions and activities on detection and prevention of money laundering and financing of terrorism which perform various financial transactions. The law-makers distinguished the lawyers as obligatory party from other obligatory parties, due to the special nature of lawyer's profession and obligation to keep strictly confidential all data entrusted to them by theirs clients.

The Law provides for and defines the activities and measures which shall be undertaken by obligatory parties, such as:

- activities of following and knowing the client;
- obligation of delivery of information, data and documentation to the Administration for the prevention of money laundering (hereinafter: Administration);
- appointment of the responsible person in the company liable for performance of obligation laid down in this Law;
- permanent professional education on these issues, training and improvement of skills of the employees;
- regular internal control on implementation of Law;
- composing of indicators for recognition of persons and transactions for which it is well grounded suspicion on their connection or involvement in money laundering, all in cooperation to the supervision bodies determined as such by the Law and Guidelines on the minimum content of the procedure "Meet your client";
- running of records, protection and keeping data from such records;
- implementation of measures from this Law in business units and the daughter-companies owned by the client being the foreign legal entity, unless it is explicitly prohibited by the regulation of this foreign country.

Apart from that, the Law determines the conditions for the transfer of cash money across the boarder. Namely, the amount of EUR 10,000 is the maximum amount which may be transferred across the border. The amount which exceeds EUR 10,000 shall be reported to the Custom office.

The Law stipulates the competences, rights and obligations of the Administration (broadens and specifies its competences), competences of supervision bodies, as well as the obligations of Government bodies and legal entities (Custom office, Central securities depositary and clearing house, courts, public prosecutor etc.).

## POSITIVE DEVELOPMENTS

Beside the fact that the law which previously regulated these issues was providing some obligations to the obligatory parties towards the prevention of money laundering, new Law introduces significant novelties in the sense that it makes such obligations more specified and concrete, widens their scope to the prevention of the terrorism, and defines and specifies key terms and expressions because there were uncertainties in interpretation of terms in previous law.

Beside already stated, the most significant novelties and improvements are:

- approach to the client on a basis of the type and estimation of risk (risk of client, risk of service provided by client, risk of country, previous experiences with a client);

- obligatory party is required to, in a case that client is for-

eign legal entity performing the business in Republic of Serbia via its branch office, establish and check the identity of foreign legal entity and also the identity of its branch office;

- the real owner of the legal entity is natural person having at least 25% of stake, shares, voting rights or other rights on a basis of which such natural person participate in management in such legal entity. The threshold of 10%, determined by previous law, has been increased. In a case that any legal entity holds at least 25% of stake in client being the legal entity, the obligatory party must acquire data on owners of legal entity holding stake in client, and further on until it acquires data on natural persons which are end-owners of the client.

In final provisions, it is stipulated that obligatory parties are required to implement the measures stipulated in Law to the clients with whom business relation were established before this Law became effective, within one year from the moment when this Law became effective.

## REMAINING ISSUES

The results and effects i.e. weaknesses and shortcomings of this Law, have to be proved in practice. Objections towards the solutions from previous Law, related to its impreciseness and deficiencies in defining of certain institutes and rights and obligations, were taken into consideration by lawmakers. Standards and rules established in the countries of European Union are mostly accepted and incorporated in a text of Law and next step is establishment of efficient mechanism for their implementation.

The most significant deficiency of previous law was its inapplicability in practice and lack of appropriate decisions of the court in criminal procedure, which resulted in the lack of preventive function of criminal penalties. Namely, in last 7 years, since the Administration has been established, only two final and binding decisions and three first-instance convicting decisions for criminal offence of money laundering were rendered. Administration is processing 60 cases each year for which it suspected that there are the elements of money laundering, but such cases are mostly qualified as official malpractice or tax evasion, and not as criminal offence of money laundering. Adoption of Law can hardly influence the court practice, but more intensive cooperation between Administration, on one side and courts and public prosecutors on other side, might probably mean the step forward in processing for criminal offences of money laundering.

New Law has not solved one outstanding issue related to the obligations of the lawyers. According to the Law on Advocacy, the lawyer is required to keep as confidential all data and information what client entrusted to him. The Chamber of lawyers of Serbia, to which the Law entrusts the supervision function over the implementation of law by lawyers, is of opinion that provisions of Law which provides the obligation of lawyers to deliver to the Administration data on client and transaction, are in collision with Law on Advocacy and obligation to keep so called "lawyer's secret". Consequently, Chamber of lawyers of Serbia shall defend before the relevant institutions the independency and autonomy of lawyer's profession and their obligation to keep lawyer's secret. Also, contrary to its obligations defined by Law, Chamber of lawyers of Serbia shall not issue indicators by which it should precise the duties of the lawyers and facilitate dealing of lawyers with their obligations from Law. This will certainly disable lawyers to act efficiently in accordance to the Law.

## FIC RECOMMENDATIONS

- To provide for the Administration with necessary administrative capacities and resources for the purpose of efficient implementation of Law;
- To adopt necessary by-laws in accordance to the Law (e.g. by-laws which regulate: a) the conditions under which

obligatory party is not obliged to report the transactions of certain parties which respectively exceed EUR 15,000; b) the manner of conduction of internal control, storage and preservation of data, keeping the record and professional training of employees of obligatory parties and lawyers; c) obligatory indicators for recognition of persons and transactions for which it is well grounded suspicion on their connection or involvement in money laundering or financing of terrorism, etc.);

- To enable transparency in a work of Administration and better communication with obligatory parties, contrary to the present practice;
- To provide for the permanent cooperation between Administration, Ministry of internal affairs, Public prosecutor office and courts, in accordance to their competences defined by the Constitution and Law;
- Influencing the public opinion on necessity for more decisive and efficient action against money laundering and corruption.

# LAW ON PROTECTION OF PERSONAL DATA

## CURRENT SITUATION

New Law on Protection of Personal Data (hereinafter: Law), which came into force on January 1st 2009, introduced completely new chapter in a field of protection of human rights in the Republic of Serbia. Protection of personal data is guaranteed in Article 42 of the Constitution of the Republic of Serbia, adopted in 2006.

In all legally organized and democratic countries efficient legal system for protection of personal data as one of the basic human rights was established and mechanism for fulfillment of protection of such right was determined. Adoption of new law was one of the prerequisites for improvement of the Republic of Serbia in its way towards liberalization of visa regime for its citizens and also important step forward in the process of European integrations. First step in the sense of adoption of new Law was performed, and the one that lies ahead is establishment of efficient legal system for implementation of Law.

In the context of the protection of personal data, one question comes to the mind, namely: who is entitled to dispose of the data on place of residence of citizens, their address, their social and marital status, their inclinations or political orientation, whether they are paying public utilities regularly or not, etc.? Are data from medical or other records of personal data of citizens being abused? Is anybody stealing their identity? Hundreds of thousand of data records on citizens exist. Until the adoption of the Law, the field of competence for establishment, keeping and processing of personal data records was not regulated.

Citizens are confronted with various violations of privacy, without being informed on their rights. Those violations are performed in different manners, starting from trivial violations such as harassment by economical or political marketing, to cases that imply the possibility of much more serious violations of privacy, such as using or stealing of someone else's identity.

In the recent past we have witnessed extremely serious violations of the right on protection of privacy or personal data, such as: taking of large number of medical records out of the medical institutions without control, delivering of personal records of all judges of Commercial Court in Belgrade to the media, publishing on internet of tens of thousands of personal numbers by Privatization Agency. Violations are often performed by employees of institutions or governing bodies that are entitled to establish the database, but not to its misuse.

## POSITIVE DEVELOPMENTS

Law determines in completely new manner the protection of personal data, the field in which specific legal vacuum existed up to its adoption. Target of the Law is not protection of personal data on its own, but protection of individual to which such data refer. Namely, the Law defines the terms and expressions in relation to protection of personal data, determines conditions for collection and processing of personal data (among others, it determines the rights and obligations of persons in charge of data and persons whose data are being collected), determines jurisdiction of bodies for protection of personal data - Trustee for public information and protection of personal data (hereinafter: Trustee), determines procedure before the Trustee, determines the manner of protection of data, anticipates the creation of records and manner of establishing and managing of records, determines the conditions pursuant to which data may be get out of the Republic of Serbia, determines the procedure of supervision of implementation of the Law, as well as the penalties for infringements of provisions of the Law.

The supervision over collection and processing of personal data did not exist for decades in the Republic of Serbia. However, Law anticipates the introduction of control in this field, and mandate for supervision of collection and processing of personal data is being entrusted to the Trustee.

Being that the Law is quite abstract, which makes its implementation even harder having in mind the lack of knowledge of citizens, Trustee issued "Guidebook through the Law on Protection of Personal Data" with assistance from the colleagues from the Republic of Slovenia, aiming to bring the Law closer to common citizen and to explain certain terms in accordance with the existing practice in countries of European Union. Additionally, the "Draft of Strategy for Execution of Protection of Personal Data" was presented, which is supposed to define key issues, role and liability of executive

bodies (Government), supervisory body and other entities in relation to protection of this right guaranteed by the Constitution.

## REMAINING ISSUES

A lot of work remains to be done, being that this Law is not completely in line with the European Commission Directive no. 95/46/EC. At the round table held on the occasion of adoption of "Guidebook through the Law on Protection of Personal Data" and introduction of the "Draft of the Strategy for Execution of Protection of Personal Data" in April 2009 in the premises of the Serbian Chamber of Commerce, by the representatives of the country member to the European Union it was pointed out that existing Law does not fulfill certain standards established in the European Union and suggested the amendment or annulment of the provisions that entitle governing bodies to certain legal protection and excludes them from implementation of the provisions of the Law, such as Articles 13, 23 and 45 Paragraph 2.

## FIC RECOMMENDATIONS

- To provide for the Trustee with necessary capacities (working space, equipment, etc.) and staff (necessary number of associates, as well as descent compensations for their work) in order to efficiently perform its competencies entrusted to it by the Law;
- To determine special supervisory (inspection) bodies that would monitor enforcement of the Law and that would be under the jurisdiction of the Trustee;
- To annul or amend questionable provisions of the Law and hence to harmonize the text of the Law with the European Commission Directive no. 95/46/EC that represents "milestone of the contemporary standards in protection of personal data";
- To adopt by - laws necessary for implementation of the Law (particularly in relation to the harmonization of existing databases, pursuant to Article 61 of the Law);
- To establish precisely defined liability system for infringement of the provisions of the Law and to enable enforcement of Trustee's orders;
- To educate and inform citizens in order to raise their awareness on their rights related to the protection of personal data as well as on manners on protection of such rights, and therefore to make the Law, being quite abstract and in a way incomprehensible for citizens, more available to citizens and easier for implementation.

# INTELLECTUAL PROPERTY

## CURRENT SITUATION

In the Republic of Serbia, the following intellectual property rights are regulated and protected: patents, designs, trademarks, indications of geographical origin, topographies of integrated circuits, copyright and related rights, as well as the right of cultivators of herbal sorts.

All these rights are protected by special laws, adopted in the period from 2004 until present time. The institutions competent for managing of IP rights are Intellectual Property Office (hereinafter: Office) and Ministry of Agriculture, Forestry and Waterpower Engineering.

The Proposal of the Law on Trademarks, the Proposal of the Law on Protection of Industrial Design and the Proposal of the Law on Protection of Topography of Integrated Circuits were put forward in parliamentary procedure for adoption.

New Law on Copyright and Related Rights and new Law on Indications of Geographical Origins were proposed and it is expected to be introduced in the parliamentary procedure.

## POSITIVE DEVELOPMENTS

Being that the implementation of the regulations on protection of IP rights has started to produce effects in practice, natural and legal persons (both foreign and domestic) enjoy three types of legal protection in the Republic of Serbia, consistent with EU regulations and standards: protection in litigation procedure before commercial courts or courts of general jurisdiction; protection in administrative procedure through the competent inspection bodies, customs and others; and, protection in criminal procedure before criminal courts.

The quality of judicial protection has been improved by establishment of special departments within the district courts, consisting of competent judges with specialized knowledge and experience in issues of protection of IP rights.

Also, by adoption of the Law on Wine, respective provisions of the Law on Indications of Geographical Origin ceased to produce legal effects by which that field was regulated, apart from the provisions on international registration of indications of geographical origin of wine. Management over the Registry of vintners and Registry of vineyards is in the competence of the Ministry of Agriculture, Forestry and Waterpower Engineering.

Based on above stated, it can be noticed that new regulations goes towards the special regulation and protection of each individual IP right and towards clear division of competences for implementation of such regulations (protection is handed over to the competent bodies in respective fields), with final goal of efficient protection of IP rights.

### The Law on Trademarks

The Law on Trademarks which is still on force regulates the manner of acquisition and protection of right on trademark. In accordance to the stated law, trademark is the sign protected by law with which participant on market designates its goods (service) in order for customer to distinguish such goods (service) from the goods (service) offered by other participant on the market. The procedure for the recognition of trademark is regulated by the Decree on Procedure for Recognition of Trademark.

New Law on Trademarks is in the parliamentary procedure and it is expected that it will be adopted in the autumn's session of the Serbian parliament. The reasons for adoption of new law are as follows:

- Adjustments in terminology with the Constitution of the Republic of Serbia and the Law on Ministries, having in mind that the Law on Trademarks was adopted as the law of former State Union of Serbia and Montenegro;

- Harmonization of the Law on Trademarks with trademark regulations of European Union (in accordance to the obligations of the Republic of Serbia from the Transitional Trade Agreement) and the law of World Trade Organization (Agreement on Trade Related Aspects of Intellectual Property Law – TRIPS Agreement);

- Defining certain provisions from current Law on Trademarks which caused different interpretations and constructions in practice.

Concrete improvements stated in the proposal of the Law on Trademarks are as follows:

- Introduction of the right to appeal in administrative procedure on a decision of the Office;

- Excluding the possibility to adopt the decision on partial recognition of trademark. In a case that the conditions for recognition of trademark are only partially fulfilled, the Office will render the decision by which it rejects the recognition of trademark for goods (services) for which the trademark can not be recognized;

- Providing of detailed rules of procedure related to the trademarks;

- Introduction of changes in terminology in comparison with wording of current Law on Trademark which caused confusion in practice;

- Introduction of possibility to register the sign as trademark even if the same trademark for similar goods (service) has been already registered, if it is explicitly approved in written by the holder of trademark which was previously registered. By this provision, the practice of the Office became included in the regulation;

- In the procedure of checking of fulfillment of conditions for registration of trademark, it is possibility for Office to take into consideration the statement of interested party who claims that proposed mark does not fulfill conditions to be recognized as trademark;

- Introduction of provision which regulates and specifies the legal institute of English law, but also adopted in majority of European laws, so called 'disclaimer";

- Introduction of possibility for the holder of trademark to prohibit, apart from prohibition of import and export of goods under certain trademark, also the transit of goods under certain trademark;

- Specification of the legal basis for transfer of right on trademark.

## REMAINING ISSUES

- Adoption, as soon as possible, of the Law on Legal Protection of Industrial Design, Law on Protection of Topography of Integrated Circuits, Law on Trademarks, Law on Copyright and Related Rights and Law on Indications of Geographical Origin, in order for the total set of laws on intellectual property rights to be harmonized with regulations of European Union;

- Lack of second instance in the administrative procedure before the competent bodies is noticeable. Introduction of the right on the appeal on decision of the competent bodies would make the protection of intellectual property rights more efficient.

## FIC RECOMMENDATIONS

- More efficient and prompt implementation of the regulations on protection of IP rights should be conducted through the reorganization of existing inspection department and establishing of new ones as needed;

- To be more decisive in sending of clear messages and altering the public opinion in order for people to understand that IP piracy and forgery are not only unacceptable but also not permissible. To reinforce this message and position through active prosecution and punishment of violators;

- To adopt remaining laws in the field of intellectual property and therefore to complete the set of laws in this field harmonized with international standards (at first place, the Law on Copyright and Related Rights and Law on Indications of Geographic Origin); and

- To adopt the National Strategy on intellectual property.

# TAX

## A. CORPORATE INCOME TAX

### CURRENT SITUATION

Taxation of corporations in Serbia is governed by the Law on Corporate Income Tax ("RS Official Gazette", No. 25/2001…84/2004; the "CIT Law"). The CIT Law is supplemented by a number of bylaws governing the implementation of the provisions of the CIT Law.

The changes to the CIT Law have been on the Government's agenda since 2006, to address the shortcomings of the current text of the CIT Law. The last draft proposal was submitted to the Serbian Parliament for adoption in January 2008 (the "Draft Proposal") but has been subsequently withdrawn. At the time of this report, the adoption of the Draft Proposal in its form dated January 2008 is questionable although the Draft Proposal is still published at the web-presentation of the Ministry of Finance.

### POSITIVE DEVELOPMENTS

- Ministry of Finance has put forward Draft Proposal that addresses the majority of the existing problems of the taxation of corporate taxpayers.

- The most important changes to be introduced by the Draft Proposal include the abolishment of limitations on marketing and advertising expenses and reduction of general withholding tax rate from 20% to 15% (for non-treaty countries).

- The Draft Proposal provides for a possibility for tax payers to opt for a different tax year (other than calendar year).

### REMAINING ISSUES

- Provisions governing taxation of permanent establishments are scarce and vague, and do not provide sufficient guidance as to what constitutes a permanent establishment, methodology for establishing the profit subject to taxation, submission and payment of CIT in situations where no legal presence of foreign business in Serbia exists, etc;

- Provisions governing transfer-pricing are too vague and are rarely implemented in the practice. The lack of legislative guidance and any reliable practice in this area has caused significant uncertainties as to the way taxpayers should handle their related-party transactions:

- The absence of tax credit for tax paid by resident taxpayers abroad on types of income other than dividend leads to the double taxation of these types of income, as well as to distortion of neutrality of different types of income generated by Serbian corporate taxpayers abroad;

- No possibility, as per currently applicable legislation, for branches to utilize available tax incentives, especially tax credit for investment in fixed assets and tax credit for newly employed workers, which puts this legal form in a disadvantageous position comparing to tax position of "standard" legal entities;

- Neither the CIT Law, nor other relevant legislation provides a clear definition of the underdeveloped regions to which tax incentives for investment in these areas apply;

- The CIT Law does not contain a single provision to govern the taxation of investment funds. The result is the distortion of the tax neutrality of investment funds, as well as the neutrality of different forms of investment funds, in particular the closed-ended and open-ended funds;

- Current version of the CIT Law still prescribes as a penalty possibility for the tax authorities to introduce three to twelve months ban on business activities for taxpayers in case of preparation of tax return and tax balance sheet based on incorrect data which resulted in decrease of tax liability.

## FIC RECOMMENDATIONS

- The Government of Serbia should proceed and re-forward the Draft Proposal to the Parliament for adoption;
- While the Draft Proposal addresses the majority of shortcomings of the present text of the CIT Law, some of its provisions introduce additional confusion in certain areas (such as, primarily, the taxation of permanent establishments). Certain issues have not been dealt with at all (the tax status of investment funds, the problem of tax credit for income generated by resident taxpayers aboard, transfer-pricing, etc.);
- Many of the existing problems in taxation of companies are related to the practical implementation of the provisions of the CIT Law. These problems should be dealt with in the bylaws of the Ministry of Finance and the Tax Authority, rather than by amendments to the CIT Law, which will introduce more flexibility in this area;
- Clarifications and consistency in approach of the Serbian tax authorities with respect to capital tax incentives such as 10-year tax holiday;
- Alignment of the tax balance sheet with current and proposed changes of CIT Law;
- Many of the existing problems are a result of the fact that the present text of the CIT Law was issued in 2001 (relying for the most part on the solutions of the previous law from 1994), drafted at the time when the business activity, in particular the presence of foreign business in Serbia was practically non-existent. For this reason, the existing solutions of the CIT Law are not fit to accommodate numerous changes which have been introduced in Serbian laws and business practice since 2001. Instead of providing partial and often inconsistent solutions through frequent amendments to an essentially outdated law, the Government should introduce a new and complete legislative text to provide a modern, clear and consistent system of taxation of companies in Serbia.

# B. PERSONAL INCOME TAX

## CURRENT SITUATION

Taxation of individuals is governed by the Personal Income Tax Law (the "PIT Law") from 2001, which was subject to two legislative adjustments in May and June 2009. In January, 2008, Ministry of finance has issued official draft proposal of the amendments to the PIT Law (the "Draft Proposal"). Due to two amendments to the PIT Law in 2009, where certain changes of the Draft Proposal have been adopted, it is realistic to expect that the Draft Proposal would require substantial adjustments before adoption in the Parliament of the Republic of Serbia.

## POSITIVE DEVELOPMENTS

The Serbian Parliament has adopted changes to the Personal Income Tax Law introducing the temporary exemption of interest from euro deposits from Personal Income Tax until December 31st 2009. In addition, the said changes also in traduced tax exemption for capital gains realized from sale of securities and stakes in legal entities from Personal Income Tax until December 31st 2009 as well as decrease of tax rate for income of entrepreneurs to 10% and simplification of rules for taxation of income from authorship agreements and similar rights.

## REMAINING ISSUES

- Higher thresholds for payment of annual income tax for foreign nationals lead to discrimination of Serbian taxpayers without any plausible justification;

- Double taxation of income received from abroad by Serbian tax residents in situation when such income is recharged to Serbian companies;

- The tax treatment of compensation of business expenses to natural persons (both employees, and persons engaged under service contracts) has not been dealt with adequately in the PIT Law. These expenses are routinely taxed as if they represent a personal expense of persons to whom they were compensated. In that sense, the PIT Law should make a clear distinction between compensation of business expenses, which do not represent income of natural persons, and cannot be subject to taxation, and compensation of personal expenses, which should be taxed;

- Specific problem are compensations of expenses for business travel abroad, which are not regulated neither in terms of procedure in which such expenses need to be documented by Serbian companies, nor in terms of thresholds which are "exempt" from the obligation to pay tax. In the absence of relevant bylaws to regulate this matter, Serbian tax authorities continue to apply the Decree on the Compensation of Expenses and Severance Pays to Employees in State Bodies. Not only that this practice has no ground in the applicable laws, but is also completely inappropriate, as the Decree imposes limitations on travel expenses which may be appropriate when it comes to civil servants, but are absolutely out of place in the business environment.

## FIC RECOMMENDATIONS

- Clear rules with respect to taxation of foreign-source income received by Serbian tax residents with an aim to exclude double taxation. In addition, the application of the cedular system of taxation of personal income remains the central problem of the Serbian system of taxation of individuals. This system was abandoned as unclear and unjust by many advanced tax jurisdictions, and Serbian government should replace it with the synthetic system as well;

# C. VALUE ADDED TAX

## CURRENT SITUATION

The Value Added Tax is governed by the Law on Value Added Tax from 2004 (the "VAT Law"). In 2007, VAT Law was amended by the Law on Changes and Amendments to the VAT Law which introduced significant changes in the existing VAT System

## POSITIVE DEVELOPMENTS

The amendments to the VAT Law introduced in 2007 have refined and clarified many of the legislative provisions which have been proven to be controversial in the practice. Examples of these include clarification with respect of issuance of invoices for services with unlimited duration, prescribing the taxable base for contributions in kind, VAT refund to foreign companies, etc.

## REMAINING ISSUES

- Due to the abolishment of VAT refund, and the absence of the possibility for the VAT registration of foreign taxpayers in Serbia without legal presence, foreign companies now do not have any means to recover the VAT paid in Serbia. The 18% VAT paid to their Serbian suppliers is an additional cost for any company with direct operations in Serbia. Not only does this solution distort the neutrality of VAT, but it also discriminates foreign companies against Serbian taxpayers. On the other hand, this exposes Serbian companies to the risk of being denied the right to refund in foreign countries on the grounds on lack of reciprocity (e.g. Germany, Hungary);

- Rules relevant for the implementation of the VAT Law are scattered over numerous bylaws, instead of being summarized in one act;

- While Serbian Tax Authority has adapted itself very quickly to the VAT system and become quite proficient in the application of VAT Law, due to lack of clear legislative guidance many of the provisions of the VAT Law are still subject of considerable controversy in practice (e.g. application of "reverse charge" mechanism).

### FIC RECOMMENDATIONS

- Tax Authority should issue comprehensive guidelines for the application of provisions of VAT Law to address various issues which have repeatedly been source of problems in the practice;

- Provisions of the VAT Law dealing with the position of foreign entities within Serbian VAT system should be revisited and amended so as allow foreign business, without legal presence in Serbia, to register for VAT purposes in Serbia.

## D. THE LAW ON TAX PROCEDURE AND TAX ADMINISTRATION

### CURRENT SITUATION

The Law on Tax Procedure and Tax Administration ("RS Official Gazette", No. 80/02…61/07; the "TPTA") regulates the general issues related to the organization of the Tax Authority and the administrative procedure before the Tax Authority. The general administrative and procedural rules of the TPTA apply to all forms of tax applicable in Serbia, unless specific tax law contains special provisions to govern a specific issue, and, in that sense, the relationship between TPTA and tax laws is that of the lex generalis to lex specialis. The TPTA was last amended in March 2009.

### POSITIVE DEVELOPMENTS

The latest changes predominately dealt with clarifying the jurisdiction and organization of the tax administration itself.

### REMAINING ISSUES

- Even with recent changes to the Law, there are still considerable discretionary powers given to the tax inspectors especially in the area of tax penalties. In addition, the uncertainties with respect to the statute of limitation period (i.e. 3 or 5 years) still remain unaddressed;

- Furthermore, the period for which adjusted tax returns is limited only to previous 12 months although the statute of limitation period is much longer. In this way, taxpayers do not have legal possibility to adjust (without penalties) mistakes discovered by themselves that refer to periods prior to the 12-months timeframe;

- Finally, the "threshold" for existence of potential tax criminal act (in case of an intention) is just RSD 150,000. Such fixed monetary amount does not take into consideration the relative size of the taxpayer in question or the relative value of indentified non-compliance with its overall tax payments throughout a calendar year.

## FIC RECOMMENDATIONS

- Tightening of the deadlines for the issuance of decisions of the Tax Authority;
- Increase of period for submission of adjusted tax returns from the current 12 months to 3/5 years (within the entire statute of limitation period)
- Clarification of the relationship of the penal provisions of the TPTA and those prescribed by the individual tax laws;
- Linking the "threshold" for existence of potential tax criminal act to the actual business indicators of the company (e.g. as a % of total tax liabilities, turnover, etc.)
- Relevant Serbian authorities should consider introduction of the "binding opinions" in the Serbian tax system whereby such rules would be bindings for the requestor of such an opinion (similarly to the "binding opinion" approach already applied by the customs authorities and tax authorities of neighbouring countries such as Bosnia/ Republic of Srpska), as this would introduce a greater level of certainty for Serbian taxpayers, especially in the areas which have proven to be controversial in the practice, and provide additional source of guidelines as to the practical implementation of Serbian tax laws.

# ENVIRONMENTAL REGULATIONS

## CURRENT SITUATION

In 2009, the Serbian Parliament enacted a great number of regulations concerning the environmental protection issues, in order to continue the harmonization process with the EU and adhere to its undertakings based on international conventions which have been ratified from 2004 onwards. The most important pieces of legislation concern the packaging and waste management, air protection, IPPC permits secondary regulation and many other environmental issues.

Most of the regulations have been enacted in May 2009 (in force as of late May). However, critical pieces of secondary regulations are still missing, for which reason the area lacks some legal scrutiny. Although companies with operations in EU should be acquainted with the main items in the regulatory framework, the authorities may lack institutional capacity to apply the law in full.

## POSITIVE DEVELOPMENTS

At the outset, it ought to be noted that great efforts by the Government and the Parliament have resulted in greater deal of legal certainty for the investors. The laws are generally harmonized with EU rules which will be welcomed by companies headquartered or with operations in developed EU countries.

The most important change introduced by the new Law on Waste Management is creating for the first time regulatory framework for the companies involved in waste management business, defining permitting issues and other legal requirements. Further, as for reuse, as well as recycling, the respective ministry plans to introduce in near future measures to stimulate the use and reuse of waste as a secondary raw material or in energy production.

The main reason for adoption of the Law on Air Protection was the implementation of Budapest commitments and implementation of rules on protection of ozone layer. CO2 is defined as one of the gases that influence the greenhouse effect, climate change and contamination of the air. Respectively, Serbian government undertook obligation to implement measures to decrease and monitor CO2 emission. This shall be accomplished by developing and performing technologies that may stop or decrease its emission, stimulating the use of alternative sources of energy and energy efficiency and activities that may decrease existing amount of the CO2 in the atmosphere. It is can also perform these measures in the scope of Clean Mechanism Development as laid down in the Kyoto Protocol.

Going into more specifics, the list of all plants for the operation of which an IPPC Permit shall be required, is already adopted. Regarding IPPC Permit, it is also determined for each respective industry measures to be undertaken and time periods for these. Also, the Program on Compliance of Industries with Environmental Laws (IPPC Program) is adopted and in force.

It should be noted that a legal entity or natural person planning to perform business activity that includes use of natural recourses and goods is obliged to obtain approval on the project for protection and remediation of environment. Furthermore, the legal entity and natural person are obliged to perform the remediation in accordance with the projects for protection and remediation.

A legal entity that manages controls or ensures technical functionality of any facility that may cause contamination of air is also obliged to perform monitoring and keep evidence on such, to ensure continual measuring of the emissions, to keep evidence on such measuring and regularly inform competent authorities on the results of such measures. The measuring of emissions may be performed by the authorized certified agencies or polluter itself, in which case polluter obtains relevant permit and ISO 17025 certificate.

It should also be noted that the Environmental Protection Agency is incorporated as well as the cadastre of pollutants; national strategy for clean development mechanisms has been adopted; and finally, the basis for building a national system for marking with ecologic sign of all products, processes and services has been created.

## REMAINING ISSUES

- Certain laws enacted in 2009 are not fully operational in practice, due to delay in passing of the by-laws;

- Rulebooks adopted are still not fully implemented in practice and there are still more to be adopted;

- Economic and financial mechanisms and tax incentives for investments in environment protection (clean production, pollution decrease, energy efficiency, waste reduction, eco-innovations, etc.) have not been sufficiently developed yet;

- There is a lack of data on environmental status due to inefficient monitoring and reporting system;

- There is no regulation on monitoring and quality requirements for air;

- Local management capacities including municipal environmental inspectors are not fully developed, as there is lack of coordination;

- Initiation of procedures for issuance of IPPC Permits is not still possible in Serbia due to lack of administrative procedures and clear guidance from the competent ministry as well as high technical requirements to be satisfied in this regard. Even though the Law on IPPC is in place as of 2004, until so far no such permits have been issued in Serbia.

## FIC RECOMMENDATIONS

We recommend that the following legislation and regulation are adopted:

- By-laws on Waste Management;
- By-laws on Packaging and Packaging Waste;
- By-laws on Air Protection;
- Plan for decreasing the amount of waste.

Also, we encourage the adoption of

- National program for environment protection.

Furthermore we recommend:

- To consolidate regulatory framework through adoption of by-laws on environment protection information system, including the contents and monitoring procedures and reporting system;
- Support to local self governments for construction of regional landfills as well as recording, sanitation and recultivation of existing dumpsites;
- To accelerate building of infrastructure for environment protection – testing, analysis, broadening of network of authorized organizations, certification, specialized services for waste management, depositing hazardous waste, remediation of contaminated soil, etc;
- To clearly define, in close cooperation with the main stakeholders, the objectives of pollution decreasing and make quantitative targets as well as mid-term and long-term time limits for attaining these objectives;

- To reinforce the capacities of local governments for the purpose of preparing local action plans in the field of ecology;
- Emission regulations to be adopted and harmonized with the EU acquis;
- To support foundation of new and development of the existing enterprises engaged in production and/or services in environment protection sector, and to support foundation of new and development of the existing enterprises engaged in production of energy trough alternative sources;
- To elaborate special regulatory and economic instruments as incentives for enterprises to apply regulations for environment protection;
- Engagement and training of local authorities staff for the purpose of issuance of the IPPC Permits and environmental impact assessment procedures.

# PRIVATE-PUBLIC PARTNERSHIP

## CURRENT SITUATION

### Background

The "Strategy for Encouraging and Developing Foreign Investment", adopted in 2006 by the Government of the Republic of Serbia recognizes public private partnership as a good mechanism to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service traditionally considered as public activities, through the cooperation with private sector finance and utilization of private management expertise.

The first PPP projects (however, not under that name) originate from granting of the concessions by the Republic of Serbia to the foreign investors for exploration and exploitation of certain mining wealth, construction, use and maintenance of highways and joint participation of the public enterprises and private sector in the field of utility activities (gas distribution, public transport, waste management, etc.).

### Legal framework for PPPs

Serbian legislation does not lay down general rules covering the phenomenon of PPPs. With the exception of the Law on Concessions and, to a certain extent, the Law on Communal Activities, the issue of the PPP is rather indirectly regulated and governed by various acts. Thus, most of those acts are not covering PPP matters primarily, but envisage possibility of applying of PPP in the fields of activities traditionally performed by a public authority. The most important laws are:

- Law on Concessions;
- Law on Public Companies and Performing Activities of Public Interest;
- Law on Communal Activities;
- Public Procurement Law;
- Energy Law, Law on Mining, Law on Gaming Activities, and other laws and bylaws.

Under mentioned laws, an activity of public interest can be assigned to a private partner, entirely or partially. The PPP may include the design, funding, execution, renovation or exploitation of a work or service. An institutionalized PPP, also possible under Serbian legislation, involves the establishment of a company held jointly by the public partner and the private partner. The joint entity thus has the task of ensuring the delivery of a work or service for the benefit of the public.

Although not stipulated by each of the mentioned laws, by entering into the PPP the following guidelines are to be considered:

- the principle of equal and fair treatment, free market games and autonomous approach of contracting parties (within the concession granting procedure);
- the principle of economy and efficiency based use of public funds;
- the principle of ensuring competition among the bidders;
- the principle of transparency of public funds utilization;
- the principle of equality of the bidders;
- the best bid election criteria.

It is also to be noted that particular regulation often overlaps, in the sense that it is not clear which of the abovementioned laws should be primarily applied for certain activity subject to a PPP, as well as it is not beyond doubt whether appliance of one the set ups envisaged by the particular law excludes relevance of other laws, or such laws should be applied cumulatively. This refers to the procedure under which a PPP is developed, as well as to substantial issues.

### Law on Public Companies and Performing Activities of Public Interest

This law generally prescribes that the business activities of public interest (such as production, transport and distribution of electricity, production, transport and distribution of coal, telecommunication, use, maintenance, protection and improvement of the public utilities (water, roads, mineral resources, woods, rivers, lakes, spas), communal activities, as well as other activities of public interest can be conducted by the public companies and also by private companies. If the public entity opts to establish a public company for operating these activities, a PPP between such public company and the private entity is possible in the manner that public company could entrust its private partner for operation of certain tasks within the scope of subject acitivity of public

interest. When solely performed by a private company, such an activity is previously entrusted by the competent public authority (the Republic of Serbia as well as Local Self Government). It is also possible for the public authority to enter into partnership by establishing a joint company with a private entity. The procedure of the entrustment is not regulated. However, an entity empowered with performance of the activity of public interest conducts its business under the agreement executed with the public authority. Essentially, such agreement defines mutual obligations of the contracting parties and the rights and obligations regarding the use of state-owned assets for the undertaking of activities of public interest.

### Law on Concessions

The law sets out various activities of the public interest which could be granted as concession to a private entity. Up to now, the concessions have been granted in the areas of exploration and exploitation of mineral resources and road infrastructure. The law prescribes the tender procedure, key elements of the concession contract, including concession fee and termination of the granted concession. Establishing of a Serbian concession company is mandatory. Protection of the concessionaires' rights is regulated as well. A concessionaire enjoys tax incentives as a foreign investor. In that regard, subsiqvently changes in law are applicable only if they are to benefit the concessionaire. The duration of the granted concession may be up to 30 years, depending on the subject, the estimated profit, level of assumed business risk, demand for construction at an early phase and demand for market development in the field of the concession.

Foreign investors are not allowed to obtain concessions in certain restricted fields of business activities and in restricted areas.

### Law on Communal Activities

The Law on Communal Activities stipulates in a general manner the undertaking of communal activities, allowing to a local public authority to establish public companies or to entrust the undertaking thereof to another entity for a period of up to five years. So far, it is common practice that public and private partner establish a joint venture company, as a carrier of the subject communal activity. If the undertaking of communal activities or certain tasks within those activities is entrusted to a company taking over the obligation of investing assets into the said activity, the period for which said entrusting may be undertaken may last for the duration of the return period of the invested assets, but no longer than 25 years.

Local public authorities stipulate the term and the manner of undertaking of the communal activities on the grounds of a public tender, and particularly: the terms and manner of holding the public tender; issues that must be regulated by the agreement; the duration of the agreement, the terms and procedure of termination of the agreement prior to the expiry of the agreement period and the rights and obligations arising therefrom. However, the said Law prescribes that local public authority may decide to entrust the undertaking of the communal activities to another company by the gathering of offers or by direct arrangement, in which case a review and expert evaluation of the submitted offers by a specialized organization is necessary.

### Law on Public Procurement

The law stipulates, inter alia, the terms, manner and procedure for procuring goods and services and performing works in cases when the contracting authority for the said procurement is a governmental body, organization or institution or some other legal entity stipulated under said law. There are certain cases of the entrustment of particular activity of public interest in which cases other laws and bylaws refer to the appliance of the provisions of this Law. However, the Law on Public Procurement is quiet whether it should be applied in regard to PPPs.

## POSITIVE DEVELOPMENTS

Adoption of the mentioned Strategy for Encouraging and Developing Foreign Investment and herewith stressed importance of the PPP should increase interest of the Serbian authorities for further development of this concept.

## REMAINING ISSUES

The coexistence of the various laws and by-laws regulating the PPP often provides uncertainty under which of those laws a PPP is to be implemented. Variety of diverse laws regulating same issues in different manner (especially in regard

to the procedure of the entrustment of certain activity or obtaining licence of its provision) results in lack of certainty when planning or initiating a PPP.

Furthermore, activities which could be subject of the PPP are in competence both of the Republic of Serbia and the local authorities, so the PPP practice is often substantially different on the republic and local level, which leads to the variety of applied untypical models, neither directly envisaged by the law nor recognised in the PPPs practise in more developed systems. To such sui generis PPP models it is inherent that the possibly occurring risk during the cooperation falls out of the existing regulation thus, resulting in the legal uncertainty.

It is highly questionable, as well, whether the principles of the Law on Public Procurement are applicable in the cases where the PPP is to be established under the law which does not provide the clear procedure when choosing a private partner, i.e. Law on Public Companies and Performing Activities of Public Interest.

It is very common that the public authority entering into certain PPP provides assets (such as real estate) as its contribution in subject PPP deal. The incoherency and dubiousity of the legislative regarding state, i.e. local public authority's property in many cases prevent further development in this field. The positive budgetary legislative also hinders further progress in this field; the incapability of local public authorities to indebt for the purposes of the PPP is such example.

In practice, very often, different political, even personal, interests of the governing political structures, both on the level of the state and on the local level, inhibit much faster implementation of PPP in Serbia.

## FIC RECOMMENDATIONS

- The existing legal framework should be systematized with the clear overview of all possibilities which are offered to foreign investors who are considering the PPP, either as a way of entering the Serbian market, or as a way of further expansion of their activities in Serbia. In that sense, enforcing PPPs umbrella law is recommended. Other relevant laws should be harmonized accordingly;
- Improved communication between the central and local authorities on the potential of the PPP concept and the implementation of intended projects would be most welcomed;
- The possibility of establishing a special governmental body, with the competences in initiating and supporting pilot schemes, standardizing the PPP process and operating as a clearing house for know-how and serving as a central contact point for the private and public sectors, especially local public authorities interested in PPP solutions, could further emphasize and improve the PPP practice in Serbia;
- Also, some amendments in existing legislative are required; adjustments and amendments of the public procurement, budgetary, taxation law, recognizing particular needs of the PPP would doubtless lead to broader interest of the foreign investors for this concept in the Republic of Serbia.

# SECTOR SPECIFIC

# TOBACCO INDUSTRY

## CURRENT SITUATION

The tobacco industry in Serbia is one of the strongest sectors of the Serbian economy, with three major international players present with their production capacities. Therefore, and in order to use these capacities and raise the competitiveness of Serbian tobacco industry on the European level, it would be of utmost importance if Government could develop and adopt long-term tobacco industry strategy in Serbia. We believe that, current stage in Serbian European Integration process is an excellent timing for creation of this strategy which should result in future for Serbia to be a significant hub and exporter of tobacco products on the EU level.

## POSITIVE DEVELOPMENTS

In the last year, the biggest issue in the tobacco regulation area was a controversial adoption of the Excise Law amendments, which triggered speculation and large public attention. This type of non transparency in the regulatory development process adds to uncertainty and lack of confidence among foreign investors. However, FIC welcomes later adoption of Law on excise which has provided much needed predictability in taxation, which is one of the most important conditions for attracting foreign investment.

## REMAINING ISSUES

- Ministry of Health initiative to introduce total smoking ban will create significant losses in hospitality and its related industries and will lead into further increase of unemployment in Serbia;

- Law on advertising which was adopted in 2005 allowed arbitrary interpretation of some of its provisions which resulted in difficulties in its implementation in the area of tobacco industry;

- Tobacco industry exclusion from the dialogue with the Serbian Government and its agencies could result in significant problems in enforcement of current and future regulation;

- The concept of ear marked tax on tobacco products introduced via Law on tobacco intended for financing of Health Budget fund deteriorates the transparency of tobacco products taxation and is not aligned with EU positive practice.

## FIC RECOMMENDATIONS

- Regulation on smoking in indoor public places has to strike an appropriate balance between the rights of smokers and non smokers, and to provide a solution which can be effectively enforced. With this in mind, Serbia should look for the most appropriate solution within EU countries. The solutions such as those implemented in Spain, Portugal, Germany, Austria, and most recently in Greece and Belgium can be used as guidance in this process. The very essence of these solutions is a realistic approach towards smoking in hospitality outlets, which are traditional places of leisure. This solution would provide smaller hospitality outlets with the possibility to decide to be entirely smoking or non-smoking, while larger hospitality outlets would have the possibility to set up physically separate smoking sections.

  It is very important to provide an appropriate transition period for necessary adjustments to hospitality outlets of at least 2 years. This would maximize the effectiveness of the regulation and ensure its proper enforcement without negative effects on the hospitality industry and employment;

- Issues in the implementation of the Law on advertising arise from a lack of clarity of a number of provisions. Such lack of clarity leads to diverse practices among industry players and arbitrary interpretation by the Trade inspectors,

which results in a lack of transparency and deterioration of regulation effectiveness. FIC believes that the regulator has to set forth clear rules which would be effectively enforced and which would create level playing field for all market participants. We hope that the expected changes in the Law on Advertising will include more precise formulations, particularly in reference to Article 64, ensuring its coherent interpretation and ultimately effective enforcement in the future.

The current Law on Advertising is in force since 2005 and the industry has gained comprehensive and in-depth experiences with its implementation. FIC believes that the industry can provide practical inputs for the regulatory improvement. Therefore involvement of the industry in the consultancy process at the earliest stage is highly recommended.

For the first time since the privatization of the Serbian cigarette manufacturers (which provided over EUR 1 billion in foreign investments) the government representatives were reluctant to engage with the industry on regulatory matters, as a result of pressure from the Ministry of Health;

- FIC supports open and transparent dialogue between regulators and the tobacco industry, just as for any industry investing in Serbia. Limiting the ability of the tobacco industry to participate in the process of regulatory development is contrary to long established principles of participatory democracy and good governance rules in many countries. Regulators should follow the principles of participation, openness, accountability, effectiveness and coherence adopted by the EU, which includes consultation of all affected parties. We agree that all branches of government should be aware of the health effects of tobacco and should integrate this knowledge when developing tobacco control policies. However, we do not support a policy of demonizing or denigrating tobacco companies. Moreover, given the complexities of regulation, especially in areas such as illicit trade prevention, fiscal policy, and product regulation, FIC believes that the expertise of tobacco companies is especially important to develop regulation that is technically viable, practically workable, enforceable, and with minimal or no unintended consequences;

- FIC recommends that all fiscal charges on tobacco products should be directed specifically through Law on excise. Additionally, the position of FIC is that newly adopted Law on Excise is adequately regulating further increases of tobacco products' taxation until 2012 and that any changes to this law would seriously undermine predictability of operating environment for investors in this industry.

# INSURANCE

## CURRENT SITUATION

### Life and Non-Life Insurance

Insurance companies and their activities are governed and regulated by the Insurance Law, adopted in 2004 and later amended, as well as related by-laws issued by the National Bank of Serbia (NBS). The NBS is the competent authority for granting and revoking licenses of insurance companies and performing the supervisory oversight of the insurance sector. Ministry of Finance is the competent authority for drafting Insurance Law amendments.

The Insurance Law regulates:

- Licensing of insurance companies – mandatory requirements concerning capital, organization, internal acts, policies and business plan;
- General terms of organization of an insurance company – requirements concerning act on foundation and articles of association, mandatory bodies (general meeting of shareholders, management and supervisory board and general manager), "fit and proper" requirements for their nomination;
- Actuary and internal audit issues;
- Reinsurance;
- Insurance agent and insurance broker activities and related licenses;
- Supervision of insurance activities by the NBS.

According to the present regulation in the Insurance Law, an insurance company is not permitted to engage in life and non-life insurance simultaneously. Also, insurance companies may engage in insurance or reinsurance activities only. An adjustment period for separation of activities – until December 31st 2009 – is envisaged for existing insurance companies. New companies must declare their field of activity at the time of incorporation.

### Insurance Market Overview

As of the second quarter 2009, there were 25 insurance companies operating in Serbia: 21 of them performing only insurance, 3 of them performing only reinsurance and one performing both activities. New foreign insurers have been entering the market both through acquisitions and as greenfield operations.

In 2009, based on second quarter data compared to the same period in 2008, the insurance market showed total decrease of -0.73% equivalent to RSD 29.8 billion or EUR 363 million.

Structure of the market is also showing signs of changes. The contribution to total written premiums of life insurance is 12.16%; this figure is encouraging but still low compared to most European countries.

Regarding non-life lines of insurance, automobile insurance was still the leading insurance product in 2009. Automobile insurance has been a growing market segment, both in terms of own damage (casco) with 13.89% and third-party liability (mandatory) insurance with 30,43%. Long waited new Law on Mandatory Insurances has been adopted.

Concentration of the market is still present as the three largest insurers in Serbia still account for a combined market share of more than 69%.

Significantly contributing in total premiums written in Serbia, insurance companies with majority foreign ownership account for overwhelming majority of the life insurance market in terms of written premium.

On the regulatory side, 2009 was the year which brought additional effort to regulate MTPL market both by NBS and MoF. NBS is further developing system for protection of consumer (insureds') rights.

## POSITIVE DEVELOPMENTS

- The privatization of socially-owned insurance companies is developing with one state owned company on the market;
- First greenfield investments were made in the sector;
- The passing of the law on compulsory insurance in transportation.

## REMAINING ISSUES

- In line with clear signals, from the MoF, separation of life and non-life is most probably to be abolished as an obligation. Without regulation that would allow companies that have legally separated the business lines to perform certain functions on shared basis those companies would be in an unfair position on the market having in mind the amount of costs both that had occurred and that are regularly occurring due to separated business operations;

- Present legal solutions regarding health insurance enacted by the Government in 2008 and 2009 in effect closed the market for commercial insurers to develop and place their own insurance products, by imposing social standards of health insurance unacceptable for all but state health fund that is placed as direct competition to insurance industry;

- NBS drafted a bylaw regarding mathematical reserve calculation that would increase reserves for life insurance companies without firm reason, by forcing companies to discount their future obligations with interest rates that are administratively limited at 3% instead of those that have been agreed upon in contract;

- Development and growth of the life insurance market would be more difficult without certain tax benefits for potential life-insurance buyers (companies and individuals) that could be provided by positive legal solutions, as is the case in many EU countries;

- Two-step reinsurance is still present in the insurance market. Although intended as a positive measure to the local insurance market, in practice it often leads to "bottleneck" for placements of some insurance and creates possibilities for unfair competition. This situation is becoming more present and obvious with the entry of more international insurance companies. Furthermore, contrary to the previous Insurance Act, brokers are not allowed to deal with re-insurance which presents deficiencies in servicing and protecting interests of the insured;

- NBS is heavily regulating the market with supervision of insurance terms and conditions together with tariffs, unlike in most EU countries where technical reserves are the focus of supervision, with terms, conditions and tariffs remaining fully in competence of companies;

- Existing insurance models present on the local market are mostly based on named perils insurances and tariffs, unlike in most EU countries. Increased demand for tailor-made and new insurance products (often initiated by foreign investors) is forcing Serbian insurers to broaden their offer; this will lead to a so-called underwriting model and ultimately to development of the insurance market;

- According to Insurance Law, insurance companies are limited for investments in with cap of 20% of the net equity and after approval by NBS. This provision is limiting possibilities for extended portfolio investments and creates unfair position as institutional investor in comparison to other financial institutions and companies in Serbia which is unlike in EU countries.

## FIC RECOMMENDATIONS

- All changes of Insurance Law should be in line with recommendation of the Insurance Association i.e. to allow to companies with separated life/non-life businesses to perform certain functions on shared bases (management, shared fixed costs and sales) in order to be competitive in cost-efficiency and composite market approach;
- Reform of legal framework in health insurance that would sharply divide market and social health insurance and would allow fair competition to insurance industry to state health fund;
- Abandoning of the proposed solution for administratively arranged discount rates;

- The abandoning of the two-step reinsurance principle by creating a more competitive environment and stimulating co-insurance procedures for insurers;
- Consider possibilities for legally provided tax benefits which would stimulate potential buyers of life and health insurance, thus creating an environment for significant growth in terms of total premiums written as well as for transfer of liabilities from state institutions to commercial insurers;
- Focus supervision to technical reserves, allowing full competence to insurance companies to regulate terms and conditions;
- Transition from tariff to underwriting models to stimulate new processes and practices both within insurance companies and the regulator;
- Reform insurance law that would allow investment in accordance with asset management strategy of the company and other bylaws without capital limit and special permission by NBS.

# PRIVATE SECURITY INDUSTRY

## CURRENT SITUATION

Despite the fact that Serbian Private Security industry employs over 30,000 people and has over 150 active security companies, there had been no significant changes in legislation. Today, Serbia is the only country in the region and in Europe without special law on private security. Few drafts of the Law were made, but never reached relevant commissions at Serbian Government.

There are several laws whose provisions indirectly regulate private security in Serbia, however those laws regulate only some of the activities of the sector, and only certain provisions of those laws (Criminal Law - provisions defining self defense and defense in extreme necessity; Law on Police; Law on Firearms; Traffic Law; Law on Labor; Law on Fire Protection; Law on Health and Safety at work).

Since there is no special law on private security, there are no defined standards in performing private security services.

Keeping in mind the European perspective, a lack of legislation in private security industry produces serious problems in functioning of this market making it an active source of corruption (no governmental licensing of companies – without security industry criteria anyone can set up and start operating as security company; no licensing of security officers – no official pre-employment screening and vetting; no professional liability risk covered by insurance in general; no mandatory training and education programs; no defined industry standards; no performance & quality control, etc.).

Another negative aspect influencing Private Security industry is stagnation of police reforms and realization of the "4D" project (depoliticization, decentralization, decriminalization and demilitarization). The gradual development of private security into a provider of public security, followed by outsourcing of security duties by public authorities due to privatization of industries and services considered as State's critical infrastructure needs a new model of protection and must be regulated.

## POSITIVE DEVELOPMENTS

Private security in Serbia faces changes due to the increasing influence of foreign private security companies – as of 2008 two of the world's largest security companies (both have European origin) are present in Serbia, bringing new "know-how" and international standards based on and harmonized with European models of private security.

The internationalization of the private security sector in Serbia is bringing some new methods of security activities which are enhancing factor of ensuring safety and security in society.

These positive developments converge with the public interest requirements, such as exclusion of unsuitable elements from the industry, guaranteeing security providers' accountability and liability.

Another important development is establishment of Serbian Association of Private Security Companies (SAPSC), gathering owners of the security companies (international and local) who cover 2/3 of the private security market in Serbia. This association is a member of Confederation of European Security Services (CoESS) which is an European umbrella organization with a longstanding expertise, "ready and willing to help and support both SAPSC and the competent national authorities in Serbia to work towards adoption of a specific law governing private security and to harmonize such legislation with a complex European environment and practices in the field of private security".

## REMAINING ISSUES

The most urgent issue is introduction of the Law on Private security. The Law should be fully harmonized with EU standards and create positive environment for further investments into Serbian Private Security Industry.

Next issue is standardization. Recently formed "Commission for standards" at Association of Private Security Companies apparently attempts to become some sort of National Licensing Body, allowing or forbidding private security companies to work based on "Serbian National Standard in Performing Private Security".

Serbia should avoid a situation of creating its own model of standards rather than accepting EU solutions available through CoESS. Since USA private security market is considered to be the most developed and advanced when it comes to standards, some EU countries (Netherland, Denmark,…) are now in process of adopting certain standards of the American National Standards Institute i.e. The Organizational Resilience Standard. Serbia should be aware of such trends and think and act in advance.

Status of security companies needs to be revised in order to establish relations between Public Security and Private Security sectors.

Status of employees working in security industry needs to be redefined considering the fact of working in the risky industry where protection of people and assets has no major differences from similar police activities.

## FIC RECOMMENDATIONS

- Immediately start with creating (drafting) the legal framework to introduce the Law on Private Security - legalization through legislation by activating Ministry of Internal Affairs as responsible entity;
- Licensing of the Companies should be handled by the Government (Ministry of Internal Affairs) or another Governmental agency and not by any organization/association since it would lead to monopolization of the industry and conflict of Interests. Serbia's Ministry of Internal Affairs should be governing body in issuing working licenses. It should also establish licensing criteria, training criteria etc;
- During the process of legislation (preparing the text - content of the law), the Government should initiate close cooperation between participating factors of security (both Public and Private sectors), with consulting of large private security investors due to their availability to present their experience and best practice from other EU countries where they have operations; it should involve private security associations in a manner of accepting and working with "core adviser" CoESS who would incorporate elements of synchronization with European legislative in the sector of private security;
- Start working on project of building active cooperation/partnership between police and private security sector-realizing preconditions to open "hot-line" between two sectors.

# LEASING

## CURRENT SITUATION

Development of the financial leasing sector in Serbia started at the beginning of 2003, when the Law on Financial Leasing was promulgated. After the Law has been adopted, a very rapid market development followed and the initial number of 9 registered financial leasing companies eventually rose to currently 17 companies. The leasing companies which are currently operating in Serbia are mainly affiliates of renowned international financial institutions and leaders of banking and financial sectors in the markets of Central and South-East Europe. These corporations have introduced their knowledge and high corporate standards to the Serbian market, as well.

In terms of liquidity, at the time when the economy is hit by solvency crisis, even during the world economic crisis, leasing companies are faced with surplus of liquid resources! It would be good to consider the possibilities of creating additional and stimulating prerequisites for reinvesting such surplus resources into the economy, in order to avoid the situation when the leasing companies, in absence of adequate opportunities to invest in Serbia, decide to return them prematurely to their creditors, thus reducing again the potential investment.

## POSITIVE DEVELOPMENTS

At an early stage of the market development, mainly financial leasing was offered while from 2006 the offer diversified to include the operational lease, the so called "rent", too. Both types of financing represented very important sources of mid-term and long-term financing and one of the most efficient solutions for purchase of plant & equipment necessary for business operations of economic operators. The structure of asset exposure from the lessee's perspective confirms that the main purpose of financial leasing in Serbia has been financing the real capital sector, meaning that over 90% of asset exposure was channeled exactly to this segment. From 2003 until 2009, financial leasing in Serbia was instrumental in financing purchases of plant & equipment in excess of 3 billion Euros.

## REMAINING ISSUES

For the purpose of better understanding of leasing issues, we would like to mention only some examples which, if provided for, would greatly improve the prerequisites for further unhindered and high-quality financial leasing in Serbia. Bringing the following issues into line, making the necessary amendments and removing the current limiting factors would certainly create the prerequisites for further development.

- To initiate amendments to the Law on Financial Leasing, so that an immovable can also be the subject of financial leasing. According to the current Law on financial leasing, only a "non-consumable movable property" can be the subject of a financial leasing;

- To initiate amendments to the Law on Financial Leasing which would define the minimum duration of a leasing contract of no less than two years, and that the lessee may, if he can afford it, pay out the whole leasing fee; furthermore, if provided for under the contract, it should be possible to transfer the acquired right of ownership over the subject of leasing;

- To initiate amendments to the Tax Law provision or to provide an interpretation of the same article regarding the company profit tax ("the tax payer who invests into plant & equipment for his own registered business activity will be entitled to a tax credit amounting to 20% of the investment, providing it does not exceed 50% of the calculated tax for the year in which the investment has been made"), meaning that companies which obtain plant & equipment by financial leasing are also eligible for the tax credit. The companies which invest in plant & equipment, respectively those that obtain such funds through financial leasing contracts shall not be eligible for the tax credits since the lessor remains the owner of subject resources for the whole duration of the contract on financial leasing;

- The Law on Value-Added Tax should be amended in the part which refers to interest rates. According to our own understanding, interest rates are financial services which are even entered into books on the credit side periodically, and it would make sense that they are treated as such under the Law on Value-Added Tax;

- Another example of how it would be possible to improve significantly the leasing market refers to a not fully consistent approach to treatment of all types of leasing, and the tendency of tax authorities "not to recognize" an operational leasing as a separate legal affair, but to classify it as a financial leasing. Such an approach significantly restricts the client's options which are indispensable for this type of financing, and limits the operation of leasing companies which are involved in this type of financing. Imposing constrains on such a legitimate option would potentially impact not only the investment scope and reduce the client's options, but it would unmistakably lead to fewer direct investments in form of leasing operations in Serbia, which is even more detrimental.

## FIC RECOMMENDATIONS

- To initiate amendments to the Law on Financial Leasing, so that an immovable can also be the subject of financial leasing;
- To initiate amendments to the Law on Financial Leasing which would allowed no restriction of the minimum duration of a leasing contract;
- Also, changes of the Tax Law provision regarding the company profit tax should equal investments by leasing with other kinds of investments;
- To initiate amendments to the Law on Value-Addede Tax, so that interest rates are treated as financial services;
- To define transparent tax treatment of operational leasing/rent.

# CHEMICAL INDUSTRY (ADCPI)

## CURRENT SITUATION

Serbian Parliament on May 2009 adopted 16 new laws, among them:

- Law on Biocidal Products;
- Law on Chemicals;
- Law on Nature Protection;
- Law on Air Protection;
- Law on Changes and Amendments on Environment Protection;
- Law on Waste Management;
- Law on Packaging and Packaging Waste;
- Law on Endorsement of Convention on Information availability, public participation in reaching decisions and legal protection on environmental matters;
- Law on Endorsement of Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

## POSITIVE DEVELOPMENTS

Adoption of new Laws presents significant step toward overall goal which is to harmonize the field of environment and management of chemicals in Serbia with European standards.

Upon entry into force of new legislation null and void are laws and legal provisions from the time of FRY, and even SFRY, which was completely incompatible to existing business conditions.

In drafting of by-laws in relation with Law on Chemicals, invited were representatives of industry to be an active participant. ADCPI members are actively involved in the drafting of this act.

## REMAINING ISSUES

- Adoption of new laws does not implicate immediate implementation. It is necessary to adopt bylaws and to organize appropriate institutional infrastructure that enables implementation of new adopted laws in their full importance, i.e. to secure realization of Law provisions.

- In some cases it seems like specific problems of the Serbian market are not respected enough so simple coping of EU legislation is unconvincing.

## FIC RECOMMENDATIONS

- It is necessary as soon as possible to establish institutions for realization of adopted laws. This relates primarily to founding Chemical Agency which is of essential importance for implementation of Law on Biocidal Products and Law on Chemicals;

- Law on Waste Management requires that all natural or legal persons that produce waste to manage waste in appropriate form depending on the type of waste. The problem is that the vast majority of companies does not possess, nor is likely to soon possess, capacities for proper disposal (means of transport or facilities for destruction of waste). The legislator did not foresee that the great majority of producers of waste are not able to independently regulate the legal obligations. Therefore, we suggest the adoption of by-laws which clearly defines the role of Republic, autonomous province and local self-government in waste management;

- Encourage establishment of new enterprises and development of existing companies that are involved in production and/or services in the environmental sector, especially those dealing with the recycling of secondary raw materials;

- Law on Packaging and Packaging Waste envisages similar to Law on Waste Management that legal or physical

entities take care by themselves of used packages or waste. Suggestion is that on all levels of authorities should be introduced public services that will be engaged only with this problem, as well as to define particular regulative and economical means that would encourage appliance of provisions related to ecology;

- In cases where imported products are for general use, which includes cosmetics products also, the current procedure is that, before placement on the market, there is repeated inspection of goods with sanitary export license, issued by the competent institutions of the exporting country. We suggest exchange the current pre-market clearance/certification into an in-market monitoring, for products accompanied by EU relevant quality and conformity certificates.

A&P D.O.O.
AUTHORIZED BOTTLERS OF PEPSI
Maršala Tita 204,11272 Dobanovci
Tel: 011 8469 100
http://www.pepsi.rs

AD POLET IGK, NEXE GRUPA
Železnička 13
23272 Novi Bečej
Tel: 023 771 200
http://www.nexe.rs

AHK – DELEGATE OF GERMAN
INDUSTRY AND COMMERCE
Cara Uroša 9, 11000 Beograd
Tel: 011 3285 436
http://serbien.ahk.de

AIRPORT CITY BELGRADE
Omladinskih brigada 88
11070 Novi Beograd
Tel: 011 3189 516
http://www.airportcitybelgrade.com

ALAS HOLDING A.D.
Jovana Đorđevića 2
21000 Novi Sad
Tel: 021 457 949
http://www.alas-holding.co.rs

ALPHA BANK SRBIJA A.D.
Kralja Milana 11
11000 Beograd
Tel: 011 3240 248
http://www.alphabankserbia.com

ALTIS CAPITAL
Kneza Mihaila 3
11000 Beograd
Tel: 011 3334 801
http://www.altiscapital.net

ASCO VIDAK D.O.O.
Železnička 5
21410 Futog
Tel: 021 895 084
http://www.asco.gr

BAKLAJA IGRIĆ MUJEZINOVIĆ
IN ASSOCIATION WITH CLYDE & CO LLP
Gospodar Jevremova 47/12, 11000 Beograd
Tel: 011 3038 822
http://www.clydeco.com

BALL PACKAGING EUROPE LTD.
Batajnički drum 21A
11185 Zemun Polje
Tel: 011 3770 600
http://www.ball-europe.com

BANCA INTESA A.D. BEOGRAD
Milentija Popovića 7b
11070 Novi Beograd
Tel: 011 3108 888
http://www.bancaintesabeograd.com

BARLAN S&M (COCA-COLA ALPINE &
ADRIATIC BUSINESS UNIT)
Batajnički drum 14-16, 11080 Beograd
Tel: 011 3081 100
http://: www.thecoca-colacompany.com

BAYER D.O.O.
Omladinskih brigada 88b
11070 Novi Beograd
Tel: 011 2070 251
http://www.bayer.rs

BD AGRO A.D.
Lole Ribara bb
11272 Dobanovci
Tel: 011 2675 165
http://www.bdagro.com

BEIERSDORF D.O.O.
Omladinskih brigada 88a
11070 Novi Beograd
Tel: 011 2220 660
http://www.beiersdorf.com

BELEXPOCENTAR D.O.O.
OGRANAK HOLIDAY INN
Španskih boraca 74, 11070 Novi Beograd
Tel: 011 3100 000
http://www.holiday-inn.com

BAT EAST BALKANS D.O.O.
Bulevar Mihajla Pupina 165g
11070 Novi Beograd
Tel: 011 3108 700
http://www.bat.com

CARLSBERG SRBIJA D.O.O.
Proleterska 17
21413 Čelarevo
Tel: 021 7550 646
http://www.carlsbergsrbija.rs

CMS REICH-ROHRWIG HASCHE SIGLE D.O.O.
Cincar Jankova 3
11000 Beograd
Tel: 011 3030 136
http://www.cms-rrhs.com

COCA-COLA HBC SRBIJA A.D.
Batajnički drum 14-16
11080 Beograd
Tel: 011 3073 111
http://www.coca-colahellenic.com

COFACE SRBIJA D.O.O.
Bulevar oslobođenja 111
11000 Beograd
Tel: 011 3976 051
http://www.coface.rs

CORPORATE MEDIA
Dragoslava Jovanovića 13
11000 Beograd
Tel: 011 3348 918
http://www.cmserbia.com

CREDIT AGRICOLE SRBIJA AD NOVI SAD
Braće Ribnikar 4-6
21000 Novi Sad
Tel: 021 4876 876
http://www.creditagricole.rs

DEKONTA D.O.O.
Bulevar Zorana Đinđića 87/4
11070 Novi Beograd
Tel: 011 3017 741
http://www.dekonta.rs

DELOITTE
Makenzijeva 24
11000 Beograd
Tel: 011 3812 100
http://www.deloittece.com

DELTA SPORT D.O.O.
Milentija Popovića 7v
11070 Novi Beograd
Tel: 011 2012 801
http://www.deltasport.com

DHL INTERNATIONAL BEOGRAD D.O.O.
Jurija Gagarina 36 V
11070 Novi Beograd
Tel: 011 3105 500
http://www.dhl.rs

DUPONT SRB D.O.O.
Omladinskih brigada 88
11070 Novi Beograd
Tel: 011 2090 580
http://www.rs.ag.dupont.com

EC HARRIS D.O.O.
Bulevar Zorana Đinđića 144v
11070 Novi Beograd
Tel: 011 3535 400
http://www.echarris.com

ECOLAB HYGIENE D.O.O.
Milana Tankosića 8
11000 Beograd
Tel: 011 2076 800
http://www.ecolab.com

EKO SERBIA A.D.
MEMBER OF HELLENIC PETROLEUM GROUP
Tošin Bunar 274a, 11070 Novi Beograd
Tel: 011 2061 500
http://www.ekoserbia.com

ERICSSON D.O.O.
Vladimira Popovića 6
11070 Novi Beograd
Tel: 011 3113 899
http://www.ericsson.com

ERNST & YOUNG BELGRADE
Bulevar Mihajla Pupina 115D
11070 Novi Beograd
Tel: 011 2095 800
http://www.ey.com/eyse

ERSTE BANK A.D. NOVI SAD
Bulevar oslobođenja 5
21000 Novi Sad
Tel: 0800 201 201
http://www.erstebank.rs

EUROBANK EFG
Vuka Karadžića 10
11000 Beograd
Tel: 011 3082 860
http://www.eurobankefg.rs

GIDE LOYRETTE NOUEL
Andrićev venac 2
11000 Beograd
Tel: 011 3024 900
http://www.gide.com

GRAND CASINO BEOGRAD
Bulevar Nikole Tesle 3
11080 Beograd
Tel: 011 2202 800
http://www.grandcasinobeograd.com

GTC INTERNATIONAL DEVELOPMENT
Vladimira Popovića 38-40
11070 Novi Beograd
Tel: 011 3130 751
http://www.gtcserbia.com

HARRISONS SOLICITORS
Terazije 34
11000 Beograd
Tel: 011 3615 918
http://www.harrison-solicitors.com

HAUZMAJSTOR D.O.O.
Dunavska 57a
11000 Beograd
Tel: 011 3034 034
http://www.hauzmajstor.rs

HENKEL SRBIJA D.O.O.
Bulevar oslobođenja 383
11040 Beograd
Tel: 011 2072 200
http://www.henkel-srbija.com

HEWLETT PACKARD D.O.O.
Omladinskih brigada 90b
11070 Novi Beograd
Tel: 011 2019 900
http://www.hp.rs

HOLCIM SRBIJA A.D.
35254 Popovac
Paraćin
Tel: 035 572 202
http://www.holcim.com

HYATT REGENCY BELGRADE
Milentija Popovića 5, PO BOX 07
11070 Novi Beograd
Tel: 011 3011 234
http://www.belgrade.regency.hyatt.com

HYPO ALPE ADRIA LEASING D.O.O.
Bulevar Mihajla Pupina 6
11070 Novi Beograd
Tel: 011 2227 000
http://www.hypo-alpe-adria.rs

HYPO ALPE-ADRIA-BANK A.D. BEOGRAD
Bulevar Mihajla Pupina 6
11070 Novi Beograd
Tel: 011 2226 000
http://www.hypo-alpe-adria.rs

IKEA D.O.O.
Omladinskih brigada 31
11070 Novi Beograd
Tel: 011 2098 802
http://www.ikea.com

IMMORENT D.O.O.
Đorđa Stanojevića 12/III
11070 Novi Beograd
Tel: 011 2287 480
http://www.immorent.com/yu

JANKOVIC, POPOVIC & MITIC O.D.
Čarlija Čaplina 37
11000 Beograd
Tel: 011 2076 850
http://www.jpm.rs

JT INTERNATIONAL
MARKETING AND SALES D.O.O.
Vladimira Popovića 38, 11070 Novi Beograd
Tel: 011 2050 300
http://www.jt-int.com

K&K ELECTRONICS D.O.O.
Nehruova 68b
11070 Novi Beograd
Tel: 011 2091 900
http://ser.kkelectronics.com

KAPSCH D.O.O.
Đorđa Stanojevića 12
11070 Novi Beograd
Tel: 011 2282 679
http://www.kapsch.net

KARANOVIĆ & NIKOLIĆ
Lepenička 7
11000 Beograd
Tel: 011 3094 200
http://www.karanovic-nikolic.com

KING STURGE D.O.O
Bulevar Mihajla Pupina 6
11070 Novi Beograd
Tel: 011 2200 101
http://www.kingsturge.com

KOMERCIJALNA BANKA A.D. BEOGRAD
Svetog Save 14
11000 Beograd
Tel: 011 3080 100
http://www.kombank.com

KPMG D.O.O.
Kraljice Natalije 11
11000 Beograd
Tel: 011 2050 500
http://www.kpmg.rs

L 'OREAL BALKAN D.O.O.
Bulevar Zorana Đinđića 64a
11070 Novi Beograd
Tel: 011 2205 900
http://www.loreal.com

LAFARGE BFC AD
Trg BFC 1
21300 Beočin
Tel: 021 874 190
http://www.lafarge.com

MARS SERBIA
Bulevar Mihaila Pupina 10 V/605
11070 Novi Beograd
Tel: 011 3132 480
http://www.mars.com

MELLON TRANSACTION SOLUTIONS
Milentija Popovića 9
11070 Novi Beograd
Tel: 011 3539 000
http://www.mellon.rs

MERCEDES-BENZ
SRBIJA I CRNA GORA D.O.O.
Omladinskih brigada 33, 11070 Novi Beograd
Tel: 011 3019 001
http://www.mercedes-benz.rs

MESSER TEHNOGAS A.D.
Banjički put 62
11000 Beograd
Tel: 011 3537 200
http:// www.messer.rs

METRO CASH & CARRY
Autoput za Novi Sad 120
11080 Beograd
Tel: 011 3777 254
http://www.metro.rs

MMD CORPORATE, PUBLIC AFFAIRS &
PUBLIC RELATIONS CONSULTANTS
Braće Jugovića 5, 11000 Beograd
Tel: 011 3285 939
http://www.mmdcee.com

NBG LEASING D.O.O.
Omladinskih brigada 88
11070 Novi Beograd
Tel: 011 2287 982
http://www.nbgleasing.rs

NEOCHIMIKI BEOGRAD
Pančevački put 83
11210 Beograd
Tel: 011 2084 942
http://www.neochimiki-sa.gr

NESTLE ICE CREAM SRBIJA A.D.
Milutina Milankovića 9B
11070 Novi Beograd
Tel: 011 3010 410

NLB BANKA A.D. BEOGRAD
Bulevar Mihajla Pupina 165v
11070 Novi Beograd
Tel: 011 2225 100
www.nlb.rs

NOKIA SIEMENS NETWORKS SRBIJA D.O.O.
Đorđa Stanojevića 14
11070 Novi Beograd
Tel: 011 3070 123
http://www.nokiasiemensnetworks.com

OMV SRBIJA D.O.O.
Omladinskih brigada 90a/II
11070 Novi Beograd
Tel: 011 2071 500
http://www.omv.rs

ORACLE SERBIA & MONTENEGRO
Bulevar Zorana Đinđića 64a
11070 Novi Beograd
Tel: 011 2016 800
http://www.oracle.com

PATRIMONS D.O.O.
Zrenjaninski put 51a
11210 Beograd
Tel: 011 3318 044
http://www.patrimons.rs

PEPSICO EUROPE - MARBO
Đorđa Stanojevića 14
11070 Novi Beograd
Tel: 011 3600 101
http://www.marbo.rs

PERNOD RICARD SRBIJA
Bulevar oslobođenja 211
11000 Beograd
Tel: 011 3975 246
http://www.pernodricard.com

PHILIP MORRIS D.O.O.
Bulevar Zorana Đinđića 64a
11070 Novi Beograd
Tel: 011 2010 800
http://www.philipmorrisinternational.com

PIRAEUS BANK A.D.
Kolarčeva 1
11000 Beograd
Tel: 011 3024 000
http://www.piraeusbank.rs

POLITIKA NEWSPAPERS
AND MAGAZINES D.O.O.
Makedonska 29, 11000 Beograd
Tel: 011 3301 161
http://www.politika.rs

PRICEWATERHOUSE COOPERS D.O.O.
Omladinskih brigada 88a
11 070 Novi Beograd
Tel: 011 3302 100
http://www.pwc.com

PRICEWATERHOUSECOOPERS
CONSULTING D.O.O.
Omladinskih brigada 88a, 11070 Beograd
Tel: 011 3302 100
http://www.pwc.com

PROCREDIT BANK A.D.
Bulevar Despota Stefana 68c
11000 Beograd
Tel: 011 2077 906
http://www.procreditbank.rs

PROCTER AND GAMBLE MARKETING AND
SERVICES D.O.O.
Omladinskih brigada 88, 11070 Beograd,
Tel: 011 2205 300
http://www.pgbalkans.com

PROGARD SECURITAS D.O.O.
Terazije 31
11000 Beograd
Tel: 011 2097 900
http://www.progard.co.rs

PS CONFIDAS D.O.O
Imotska 1
11000 Beograd
Tel: 011 3956 800
http://www.ps-confidas.rs

RAIFFEISEN BANKA A.D.
Bulevar Zorana Đinđića 64a
11070 Novi Beograd
Tel: 011 3202 100
http://www.raiffeisenbank.rs

RAIFFEISEN LEASING D.O.O.
Milutina Milankovića 134a
11070 Novi Beograd
Tel: 011 2017 700
http://www.raiffeisen-leasing.rs

RESERVOIR CAPITAL SEE D.O.O.
Požeška 83a
11000 Beograd
Tel: 011 2544 686
http://www.reservoircapitalcorp.com

RHINE DANUBE D.O.O.
Đerdapski put b.b.
19320 Kladovo
Tel: 019 801 024
http://www.shipyardkladovo.com

RIO TINTO
RIO SAVA EXPLORATION D.O.O.
Bul. Zorana Đinđića 71, 11070 Novi Beograd
Tel: 011 3110 239
http://www.riotinto.com

S & T SERBIA D.O.O.
Narodnih heroja 43/23
11070 Novi Beograd
Tel: 011 3116 221
http://www.snt.rs

S LEASING D.O.O.
Đorđa Stanojevića 12/III
11070 Novi Beograd
Tel: 011 2010 700
http://www.s-leasing.rs

SBB SERBIAN BROADBAND
Kralja Petra 45
11000 Beograd
Tel: 011 3305 252
http://www.sbb.rs

SIEMENS D.O.O. BEOGRAD
Omladinskih brigada 21
11070 Novi Beograd
Tel: 011 2096 005
http://www.siemens.rs

SLADARA MALTINEX A.D.
Industrijska zona bb
21400 Bačka Palanka
Tel: 021 752 910
http://www.soufflet-groupe.com

SOCIETE GENERALE BANKA SRBIJA
Bulevar Zorana Đinđića 50 a/b
11070 Novi Beograd
Tel: 011 3011 400
http://www.societegenerale.rs

SUNOKO D.O.O. NOVI SAD,
MEMBER OF NORDZUCKER GROUP
Trg Marije Trandafil 7, 21000 Novi Sad
Tel: 021 4878 111
http://www.sunoko.rs

SPECIJALNA BOLNICA SVETI VID
Dobračina 27
11000 Beograd
Tel: 011 3283 737
http://www.svetivid.com

SYNGENTA AGRO SERVICES AG
Koste Glavinića 2
11000 Beograd
Tel: 011 3690 994
http://www.syngenta.com

TELEKOM SRBIJA A.D.
Takovska 2
11000 Beograd
Tel: 011 3337 171
Web: www.telekom.rs

TELELINK D.O.O.
Omladinskih brigada 88b
11070 Novi Beograd
Tel: 011 3779 900
http://www.telelink.rs

TELENOR D.O.O.
Omladinskih brigada 90
11070 Novi Beograd
Tel: 063 9863
http://www.telenor.rs

TELETRADER D.O.O.
Bulevar Vojvode Mišića 39a/III
11040 Beograd
Tel: 011 3693 234
http://www.teletrader.com

TETRA PAK PRODUCTION
Milutina Milankovića 11b
11070 Novi Beograd
Tel: 011 2017 361
http://www.tetrapak.com

PREDUZECE ZA PROOIZVODNJU GUMA
TIGAR TYRES, D.O.O.
Nikole Pašića 213, 18300 Pirot
Tel: 010 313 130
http://www.tigartyres.com

TITAN CEMENTARA KOSJERIĆ
Živojina Mišića bb
31260 Kosjerić
Tel: 031 590 320
http://www.titan.rs

UNICREDIT CAIBSRBIJA D.O.O.
Kneginje Ljubice 11
11000 Beograd
Tel: 011 3286 926
http://www.unicreditbank.rs

UNILEVER BEOGRAD D.O.O.
Omladinskih brigada 88
11070 Novi Beograd
Tel: 011 2091 800
http://www.unilever.com

UNIQA A.D.O.
Milutina Milankovića 134G
11070 Novi Beograd
Tel: 011 2024 100
http://www.uniqa.rs

UNITED SERBIAN BREWERIES
Omladinskih brigada 90b
11070 Novi Beograd
Tel: 011 3538 611
http://www.heinekeninternational.com

U. S. STEEL SERBIA, D.O.O.
Radinac
11300 Smederevo
Tel: 026 224 730
http://www.cs.uss.com

VEOLIA TRANSPORT SERBIA
Zrenjaninski put 86M
11210 Beograd
Tel: 011 3317 517
http://www.litas.rs

VIP MOBILE D.O.O.
Omladinskih brigada 21
11070 Novi Beograd
Tel: +381 11 2253 333
http://www.vipmobile.rs

VOJVODJANSKA BANKA A.D.
MEMBER OF NBG GROUP
Trg Slobode 5-7, 21000 Novi Sad
Tel: 021 4886 600
http://www.voban.co.rs

VOLKSBANK SRBIJA
Bulevar Mihajla Pupina 165g
11070 Novi Beograd
Tel: 0700 700 800
http://www.volksbank.rs

WIENER STADTISCHE OSIGURANJE A.D.O.
BEOGRAD
Bul. Mihajla Pupina 165g,11070 Novi Beograd
Tel: 011 2209 901
http://www.wiener.co.rs

WOLF THEISS & PARTNERS D.O.O
Bulevar Mihajla Pupina 6/18
11070 Novi Beograd
Tel: 011 3302 900
www.wtp.at

# ACKNOWLEDGEMENTS

The White Book 2009 has been produced through joint efforts of the Foreign Investors Council and the Serbian Chamber of Commerce. Numerous FIC member companies generously provided their input, while the FIC Committees played the key role in the drafting process.

We wish to acknowledge the following companies and organizations for their contributions to the White Book 2009:

British American Tobacco East Balkans d.o.o.
Baklaja Igric Mujezinovic
Carlsberg Srbija d.o.o.
CMS Reich-Rohrwig Hasce Sigle
Ernst & Young Beograd d.o.o.
Hauzmajstor
Holcim Srbija d.o.o.
Henkel Srbija d.o.o.
Hypo-Alpe-Adria Leasing
Harrisons Solicitors
Hauzmajstor
Immorent d.o.o.
Japan Tobacco International
Jankovic, Popovic & Mitic o.d.
L'Oreal
Karanovic & Nikolic
Messer Tehnogas
PriceWaterhouseCoopers
Progard Securitas d.o.o.
Philip Morris d.o.o.
Procter & Gamble Marketing and Services
Raiffeisenbank a.d. Beograd
Raiffeisen Leasing
S-Leasing d.o.o.
Serbian Chamber of Commerce
Uniqa Osiguranje a.d.o.
VIP Mobile d.o.o.

**PUBLISHER:**
Foreign Investors Council
37 Svetogorska Street, I floor
11000 Belgrade
Serbia
e-mail: office@fic.org.rs
http://www.fic.org.rs

**Layout, realization, production:**
Corporate Media d.o.o.
13 Dragoslava Jovanovića Street, I floor
11000 Belgrade
Srbija
www.cmserbia.com

**Printed by:**
CICERO d.o.o.


Foreign Investors Council

37 Svetogorska Street, I floor
11000 Belgrade
Serbia
office@fic.org.rs
www.fic.org.rs